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Presidential Documents

Title 3—

The President

Proclamation 6719 of September 14, 1994

National Hispanic Heritage Month, 1994

By the President of the United States of America

A Proclamation

As children across the country return to school this year, it is easy to see the vast diversity that defines America reflected in the sea of young faces filling our classrooms. Our ancestors came from all corners of the globe, bringing the myriad cultures, knowledge, and beliefs that shape our Nation today. For every one of us, the community that shares our ethnic heritage can provide an important source of strength and continuity in today's rapidly changing international marketplace. If our Nation is to succeed in that global arena, we must embrace the energy and creativity of all of our people, relying on the strength of community more than ever.

Young Hispanic Americans are future leaders, educators, and workers of our Nation. For their sake and for the generations of young people to come, we must strive to advance the great traditions of family and community that have enabled Hispanic Americans to make invaluable contributions to our country since its beginnings. These traditions, fortified by new opportunity, can uplift our people and help to build a brighter future for all of our children.

On February 22, 1994, I joined Hispanic Americans in taking an important step toward setting a new standard for educational excellence. Designed to better prepare our people to meet the challenges we face, Executive Order No. 12900, which I signed that day, seeks to improve educational opportunities for Hispanic Americans throughout the Nation. It establishes a commission of leaders from the Hispanic American community that will focus on Hispanic children and youth and recommend methods to improve their academic performance. Drawing on the high standards set by our Goals 2000: Educate America Act, the commission will look for ways to encourage government and the private sector to work as a team to inspire Hispanic students to achieve those goals. And an interagency working group will strive to ensure that the obstacles still confronting too many of our people—barriers from language to unemployment to crime—are more easily overcome.

To recognize the accomplishments of Hispanic citizens and to focus national attention on their extraordinary contributions and culture, the Congress, by Public Law 100–402, has authorized and requested the President to issue annually a proclamation designating September 15 through October 15 as "National Hispanic Heritage Month."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim September 15 through October 15, 1994, as National Hispanic Heritage Month. I call upon the people of the United States, government officials, educators, and volunteers, to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of September, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 94–23270
Filed 9–15–94; 3:14 pm]
Billing code 3195–01–P

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Presidential Documents

Title 3—

The President

Executive Order 12927 of September 15, 1994

Ordering the Selected Reserve of the Armed Forces to Active Duty

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 121 and 673b of title 10 of the United States Code, I hereby determine that it is necessary to augment the active armed forces of the United States for the effective conduct of operational missions to restore the civilian government in Haiti. Further, under the stated authority, I hereby authorize the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, to order to active duty any units, and any individual members not assigned to a unit organized to serve as a unit, of the Selected Reserve.

This order is intended only to improve the internal management of the executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

This order is effective immediately and shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
September 15, 1994.

[FR Doc. 94–23273
Filed 9–15–94; 3:11 pm]
Billing code 3195–01–P

Editorial note: For the President's letter to congressional leaders on ordering the Selected Reserve of the armed forces to active duty and his address to the Nation on Haiti, see issue 37 of the *Weekly Compilation of Presidential Documents.*

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

General Administrative Regulations; Actual Production History (APH) Coverage Program

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby issues regulations to provide a method for determining insurance coverage based on Actual Production History (APH). An approved APH yield, when multiplied by a percentage of an elected coverage level and price per commodity unit, results in a dollar amount of insurance coverage per acre. This rule is being promulgated in accordance with the requirements of the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: October 19, 1994.

FOR FURTHER INFORMATION CONTACT: Mari Dunleavy, Regulatory Specialist, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Executive Order 12866, and Departmental Regulation No. 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is September 1, 1999.

This rule has been determined to be not-significant for purposes of Executive Order 12866, and therefore, exempt from OMB review and has not been reviewed by the Office of Management and Budget (OMB).

This action does not have a significant effect on a substantial number of small entities. It imposes no added burden on the insured farmer or on the private insurance company serving as the delivery agent. APH has been the basis for computing insurance guarantees under the Federal Crop Insurance Program, on an *ad hoc* basis for over eight years and has its genesis in the Individual Yield Coverage Plan (7 CFR 400.15–400.21). This rule codifies procedure which is already effective. Therefore, this action is exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

The program is listed in the Catalog of Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment or an Environmental Impact Statement is needed.

The collection requirement for this regulation is form number FCI–19A (APH Production Reporting Form) and has been previously approved by the OMB under the provisions of 44 U.S.C. 3501 *et seq.*, the Paperwork Reduction Act of 1980. The control number for the APH Production Reporting Form is OMB #0563–0029. See 7 CFR part 400, subpart H.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have substantial direct effects on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this rule are not retroactive and will preempt State and local laws to the extent such State and local laws are inconsistent. The administrative appeal provisions, located at 7 CFR part 400, subpart J, must be exhausted before judicial action may be brought for actions taken under these proceedings.

Background

The Federal Crop Insurance Act, as amended by the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66), requires the establishment of a plan and the publication of regulations for the use of the producer's actual production history to determine yield coverage. FCIC has used such a plan on an *ad hoc* basis for a number of years.

An approved actual production history (APH) yield, multiplied by a percentage of an elected coverage level and price per commodity unit, provides the dollar amount of insurance coverage per acre. If the insured does not submit production records for insurance purposes, 65 percent of an FCIC estimated yield (transitional or determined yield) is the default approved APH yield. The FCIC estimated yield, after applicable adjustment, is used in conjunction with actual production records to compute the approved APH yield when less than four years of actual production records are available.

On October 14, 1993, the FCIC published in the **Federal Register** at 58 FR 53150 proposed regulations outlining the provisions for the APH plan. The FCIC requested and received comments from the public regarding the proposal.

The comments and their responses are grouped according to subject, area of concern, and by subpart of the proposed regulation.

1. General Comments, Differences Compared to 1994 APH Program

Comments: Several comments pointed out that the new producer, crop year, and base period definitions differ from FCIC approved procedures implemented for the 1994 crop year. The comments requested that the regulation be changed to agree with those APH procedures if it is to be effective for the 1994 crop year. They indicated that these changes will drastically affect computer programming, computer edits, FCIC data reporting requirements, etc. If the regulation is not changed and is to be effective for the 1994 crop year, they

requested that the comment period be reopened to provide an opportunity to review the impact of these changes.

Response: There are differences between the regulation published for comment and the APH procedures used for the 1994 crop year. The differences are minor but, if implemented for the 1994 crop year, the regulation would have major impacts on the current program. Fall and spring seeded crop policies have been sold, production reports filed, and approved APH yields calculated, processed, and submitted to FCIC based on procedures implemented in July 1993.

For these reasons, the regulation, with minor changes, will be implemented effective for the 1995 crop year.

2. Coverage and Participation

Comment: Twenty comments stated that the APH program will reduce insurance protection to many farmers, decrease farmer participation, and increase future demand for free disaster payments. The comments suggested that FCIC encourage participation by offering higher levels of protection to producers.

Comment: One comment noted that 65 percent of the transitional yield will be used when a producer does not furnish any previous yield data. The comment suggested that FCIC change this percentage to 80 percent.

Comment: Section 400.54(b)—the proposed reduction of transitional or determined yields by the stated 80 percent for maintaining one year of actual records and 90 percent for maintaining two years of actual records is inadequate to serve as an incentive for insureds to report all four years of actual production in relationship to the 65 percent reduction for no records. Also, there does not appear to be a penalty for maintaining only three years of actual records. A greater penalty is needed for not maintaining less than four years of records.

Comment: One comment suggested that if a producer applying for Federal crop insurance coverage has no previous production records (an example of this would be production of the alternative crop Kenaf, where very little production history exists), that individual should be able to receive crop insurance coverage for the entire crop. The only way to accomplish this is to raise the transfer yield to 100 percent, as opposed to 65 percent. The comment also recommended that an option be provided to allow producers to purchase additional coverage for crops having no previous production records.

Comment: One comment urged FCIC to exclude those losses resulting from catastrophic events in the loss ratio determination.

Response: The Federal Crop Insurance Act, as amended, requires FCIC to take actions as necessary to improve actuarial soundness of the multiple peril crop insurance program. FCIC is mandated to achieve an overall loss ratio, within certain parameters, of not greater than 1.10 by October 1, 1995. FCIC's research using existing insureds' APH data indicates insureds with no records of production (or one or two years of records) are paid disproportionate losses compared to insureds who have provided three or more years of production records. Further analyses by FCIC using modified APH procedures and existing insureds' APH data, indicates that 65 percent of the transitional or determined yield (hereafter referred to as T-Yield in FCIC's responses) is an appropriate percentage to attain the required loss ratio for persons who have not submitted records. Independent analyses from a private insurance association support these findings.

Insureds who have provided three or four years of records have lower loss costs and do not require the use of reduced T-Yields. Modifications to APH are not intended to reduce insurance protection to farmers, rather the intent is to base yields more fully on actual yields and to rely less on T-Yields. APH procedures allow ample opportunity for producers who have not raised insurable crops (and therefore have not had the opportunity to establish records) to qualify for APH yields greater than 65 percent of the T-Yield through use of new producer, added land, and new practice procedures.

Producers are encouraged to provide as many years of actual yields as possible. Above average yields will reduce the impact of low yields. If actual yields reported are higher than the T-Yield, modified APH procedures allow a better opportunity for increased insurance yields as compared to previous APH procedures.

FCIC is not able to provide APH yields higher than the insured's average yields without adversely affecting FCIC loss ratio and financial accountability. FCIC has researched options that provide coverage based on yields higher than the insured's APH yield or the yield history available for the crop on a county basis. This analysis indicates that a significant increase in premium rates is required to make such a program actuarially sound. FCIC will retain the APH structure as proposed.

3. Section 400.50 Availability of APH Program

Comment: The last sentence of § 400.50 states, "Except when in conflict with this subpart, all provisions of the applicable crop insurance contract for these crops apply." Concern was expressed that this regulation may override the terms and conditions in current crop filings. The commentor indicated that policy language should not be superseded by any other published regulations since policyholders receive copies of policy provisions but do not receive Federal regulations.

Response: Federal regulations have the force and effect of law and all have constructive notice of the provisions. As a practical matter we are not aware of any provision of the published policies in conflict with these regulations. As crop insurance policies which base production guarantees on APH yields are revised, those provisions relating to APH will be changed in accordance with the final APH regulation. Reinsured companies furnish policyholder's letters that describe changes to each crop insurance contract. These letters also suggested that insureds contact their agents for a full explanation of the changes and once so advised, insureds then can make informed crop insurance decisions. Copies of these letters should be provided by the insurer to all affected policyholders.

4. Added Land (Purchased or Leased)

Comment: One comment stated concern that, under the proposed regulation, the producer is not eligible to transfer his or her skill and history to new land purchased or leased. It was suggested that a producer's history be taken into account when calculating coverage under a crop insurance policy

Response: The regulation provides general rules while allowing flexibility for program details to be provided in procedures. Added land procedures for APH yield determinations are available that provide insureds the opportunity to establish approved APH yields higher than 65 percent of the T-Yield when new land is purchased or leased. FCIC has added a new paragraph to § 400.54(b) consistent with those procedures which allow yields for added land that are more comparable to approved APH yields determined from acreage with records.

5. Databases Used To Calculate the APH Yield

Comment: One comment noted that a four year history does not provide a

balanced history in which an agent can accurately calculate a producer's coverage. A one or two year drought would severely affect a producer's history. A ten year history would provide more stability.

Comment: One comment suggested that the base period be a minimum of five years. Four years are not sufficient. Approved yields may fluctuate tremendously from year to year. The schedule for the percentage of the T-Yield used, based upon the years records provided, should be as follows: zero years—80 percent; one year—85 percent; two years—90 percent; three years—95 percent; four years—100 percent; and five or more years the T-Yield is not used.

Comment: One comment noted that in § 400.54(h), "FCIC may use any production reports available under the provisions of any crop insurance contract, whether continuous or not (emphasis added), which involve the interests of the insured person in determining the approved APH yield." Current APH procedures allow new insureds (including insureds with a break in continuity of insurance coverage of at least one year) to certify one or more crop years to establish the APH yield. Since processing has already begun, implementation of yields that are not continuous will impose major difficulties. In accordance with the proposed definition of crop year, this could require companies to maintain yield history indefinitely (for example, a farmer may have had a policy five years ago with production history going back 30 or 40 years to accumulate 10 crop years).

Response: The level at which the reduced T-Yield has been set for zero, one, or two years of records was established to offset disproportionate losses as compared to insureds who have provided more years of actual records. Using higher levels of T-Yields is contrary to that objective. The modified APH program encourages the insured to provide actual records by using reduced T-Yields if the insured provides less than four years of actual yields.

The proposed regulation does not limit insureds to providing only four years of actual yield. In fact, continuous records up to ten years must be used if available. The more years of records used, the less the effect fewer actual yields have. Insureds may submit one to ten years of continuous crop years of actual yields to be used in the APH yield calculation.

With data automation and reporting changes, actual yields will be retained until the database contains ten crop years of actual yields. There is no need to expand the database to include calendar years that are not used to calculate the APH yield. Data processing changes can be accomplished for the 1995 crop year.

6. Why a Federal Regulation?

Comment: One comment requested justification as to FCIC publishing in the **Federal Register** a program (APH) that has already been implemented by FCIC approved procedures. The comment went on to state that, as introduced in the mid 1980's the APH program did not have its procedures published in the **Federal Register.** By implementing the program as a regulation, the comment stated that FCIC is limiting its ability to administer the APH program as changes can no longer be handled administratively. Any changes will be required to be published in the **Federal Register** prior to implementation.

Response: The regulation provides a foundation on which the APH program and procedures will be based. The regulation will strengthen FCIC's and reinsured companies' ability to defend the procedures used to determine APH yields if reconsideration, appeal, or litigation proceedings relating to APH are pursued by insureds. The previous unpublished procedures were not effective unless the insureds received actual notice of program changes prior to the contract change date.

7. Base Period Section 440.51(g) and Crop Year Section 400.51(i)

Comment: § 400.51(g), (i)—Three objections to the definition of crop year and base period were stated. The base period is defined at 10 consecutive crop years. Crop year is defined as any year in which the crop is planted. Under the regulation, the base period is no longer 10 consecutive crop years beginning with the most recent year, but would vary from each crop and policy, and possibly from each database within a policy. It is conceivable that a database may contain land planted to the insured crop every other year, in such case, the base period could stretch back 20 *calendar* years to obtain 10 *crop* years.

Response: Crop year as defined, benefits producers who rotate different crops, rotate the same crop on different units, or who only occasionally plant the insured crop. For example, if an insured has three consecutive crop years of actual records on a unit: 1984, 1988, and 1993, by using crop year as defined in the regulation, all three actual yields will be retained in the database for the 1995 crop year. If the crop is not planted in 1994, 100 percent of the T-Yield will be used as the fourth yield when calculating the APH yield. The more years of experience in the database, the more reliable a yield determination can be made. Requiring only 10 consecutive calendar years of records may result in a yield determination which does not adequately reflect the farm history.

Comment: A comment was received recommending deleting the last sentence of § 400.51 (i) which states, "If the insured is prevented from planting all of his acreage in the county due to flood and does not plant for harvest any other crop, FCIC will assign a yield for that year."

Response: FCIC agrees with this comment and has deleted the last sentence accordingly.

8. Section 400.51(m) New Producer Definition

Comment: Several comments noted that the definition of new producer is different in the rule than the definition implemented by the *ad hoc* procedures for 1994 fall crop year. The definition in the procedures defines a new producer as a "person who has not been actively engaged in farming for a share of the insured crop's production in the county for more than two years." The rule defines the new producer as "a person who has not been actively engaged in farming for a share of a crop for more than two years." The rule deals with individuals who are new to farming while procedures deal with individuals who are new to producing the crop they wish to insure. If the proposed definition of a "new producer" goes into effect, very few producers will qualify as a new producer.

Response: FCIC agrees that this definition may be too restrictive. For example, a producer who has never raised corn would NOT be considered a "new producer" for corn if he or she has raised another crop (wheat for example) for more than two crop years. Under the proposed regulation this producer's insurance yield for corn would be restricted to 65 percent of the T-Yield because records are not available for corn. A producer who has no farming experience at all would fare much better, because as a "new producer" he or she will qualify for an insurance yield based on 100 percent of the T-Yield (for all insured crops). After further evaluation, FCIC agrees that the "new producer" provisions should apply to new producers of an insured crop regardless of their production of other crops.

9. Section 400.51 Definitions

Comment: Several comments recommended technical corrections of definitions as follows:

1. *Actual Yield and Production Report*—reference is made to "insurable acres for perennial crops" instead of "planted acres."

2. *Approved APH Yield*—the database may not always contain four consecutive crop years (actual yields). The definition needs clarity that the total of the yields is divided by the *number of years with yields.* (Also see comments to definition of "Crop Year.")

3. *Assigned Yield*—suggest changing "considered" to "handled in the same manner as."

4. *Master Yield*—indicate its availability is limited to certain crops and counties designated by FCIC.

5. *Production Report*—remove "by us" in the first sentence. Rewrite to include the possibility that production may be reported for more than the one (most recent) crop year.

Response: FCIC agrees with these comments and has revised the definitions accordingly.

10. Section 400.52 Reporting and Record Requirements

Comment: One comment suggested that the language in § 400.52(b)(1), regarding inaccurate reporting or failure to retain acceptable records, be changed from "may result" or "may be" to "shall be" to eliminate any implicit option. The penalty for not having or retaining acceptable records should be the combining of farm units and the recalculation of the APH yield.

Response: Basic farm units must be provided irrespective of APH records. Optional farm units are a further subdivision of basic units and must meet separate record requirements stated in the crop policy to qualify as separate optional units. Recalculation of the APH yield will not always result in a lower APH yield. However, if inaccurately reported or acceptable records are not retained for either basic or optional units, APH yields will be recalculated. FCIC has made changes to the regulation to address this concern that are consistent with the crop insurance policies.

Comment: Section 400.52(b)(4)—This provision states that the policy may be canceled and subject to false claims penalties if the production history is not accurate. Section 400.52 (a)(3) indicates it is acceptable not to provide complete production reports since assigned yields are an acceptable means to maintain continuity of yield data on file. A comment suggested that § 400.52 (a)(3) and (b)(4) are in conflict with § 400.52(b)(1).

Response: FCIC does not agree that a conflict exists. However, FCIC has clarified these provisions to more accurately reflect their intent. Section 400.52(a)(3) allows FCIC to use previously reported production history to calculate APH yields, if the insured does not file annual production reports as required by the policy. Section 400.52(b)(1) specifies that inaccurate reporting or failure to maintain acceptable supporting records will result in the combining of optional units and recalculation of the APH yield. Section 400.52(b)(4) is a separate action that may be taken if an insured misrepresents or fraudulently reports APH information.

11. Section 400.53 Submission and Accuracy of Production Reports

Comment: One comment suggested deleting § 400.53(e) since it essentially duplicates the provisions of § 400.53(a).

Response: FCIC agrees with this comment and has changed the provision accordingly.

12. Section 400.54 Qualification for Actual Production History Coverage Program

Comment: Section 400.54(a)—One comment suggested that the first sentence be revised because production reports for the four most recent crop years are not required to qualify for APH. The comment also suggested revising the last sentence because of the possibility of zero planted years. The comment suggested employing ". . . will occur in the database when there are less than four actual/assigned yields in the database."

Response: FCIC agrees with these suggestions and has made the appropriate changes.

Comment: One comment noted that in § 400.54(a) the term "will be updated" suggests that production reports are mandatory each subsequent crop year. The comment suggested that the regulation address the possibility that coverage may be based on 65 percent of the T/D yield without yearly production reports.

A comment also stated that records are not mandatory, as indicated in § 400.54(b), and that insureds may have approved APH yields based on 65 percent of the T/D-Yield if acceptable records are not available or not provided. The comment also stated that yields from claims will not be used (as indicated in § 400.51(n)), if an insured elects not to provide records and have the APH yield based on 65 percent of the T/D Yield (also applies to § 400.54(d)).

Response: FCIC implemented procedures for modified APH for the 1994 crop year intending to allow producers the option of basing production guarantees on 65 percent of the T-Yield without requiring records. Not requiring records in subsequent crop years had been criticized because the use of loss records is perceived to be mandatory for APH purposes. It is also viewed as not encouraging insureds to provide records.

FCIC agrees that use of loss records should be required for APH purposes. Actual yields determined from claims for indemnities will be used when calculating APH yields for the 1995 and succeeding crop years. Calculation of APH yields based on 65 percent of the T-Yield without records will be allowed only for the initial crop year of insurance. Records will be required for subsequent crop years.

Comment: Section 400.54(d)—One comment suggested deleting the phrase "to compute an approved APH yield" because it is not required to have an actual yield for the most recent crop year to calculate an approved APH yield. The comment also suggested deleting the phrase "at discretion of FCIC."

Response: FCIC does not agree with the suggestion to delete "to compute an approved APH yield" because the phrase relates to providing actual yields (production records) in order to qualify for optional units. However, the language has been clarified to reflect this intent.

FCIC does not agree that "at discretion of FCIC" should be removed. This provision allows FCIC a degree of flexibility concerning the impact of loss records (e.g., FCIC may need to lessen the impact a loss record has on APH yields for a catastrophic year).

Comment: Secion 400.54(e)—One comment suggested deleting provisions (1), (2), and (3), because the provisions are more applicable to procedures. If not deleted, the comment suggested inclusion of the definition "FCIC RSO Determined Yield" and clarification that provisions (1), (2), and (3) apply only to category C perennial crops, not just item (3). The comment further suggested deleting any reference to T-yield tables in (1).

Response: FCIC does not agree that § 400.54(e) (1), (2), and (3) of the rule should be deleted. These provisions allow additional flexibility for those situations listed. For example, T-Yields are not published for all crops or for all counties. Therefore, the rule must allow an alternative method to calculate approved APH yields when T-Yields are not available. For this reason, the reference to T-Yields should not be deleted. These provisions allow FCIC to continue APH procedures implemented for the 1994 crop year that are

consistent with procedures used in previous crop years. The term "FCIC RSO Determined Yield" is not used in the rule, so consequently, the term need not be defined.

Comment: Section 400.54(g)—One comment suggested the following rewrite of the last sentence to improve clarity: "Master Yields are based on production history from all acreage of the crop in which the insured has an interest in the county." Another comment noted that the rule consistently requires that the producer provide four years of records in order to qualify for a Master Yield. This requirement has hampered new sales of crop insurance which use the Master Yield concept. Master Yields may vary drastically between landlord and tenant on the same piece of ground due to the fact that a producer's yield is calculated using records from all farms. The comment suggested that FCIC work with the industry to resolve these problems.

Response: FCIC agrees with these comments and has made the necessary changes. Regarding the concerns about Master Yields, FCIC will not change the four-year record requirement because APH is also available on Master Yield crops. FCIC also will base Master Yields on the operator's records. By calculating Master Yields from the operator's records, the same APH yield will be provided for both the landlord and tenant. FCIC has implemented the Master Yield changes for the 1994 crop year.

Comment: Section 400.54(h)—One comment suggested that the phrase "whether continuous or not" was misleading, considering the previous emphasis on maintaining continuity of production reports. The comment further made the following observations. If entering a yield is intended to allow use of history prior to the break in continuity of production reports, it should be so clarified. If intended to allow prior history regardless of a break in continuity of insurance, entering a yield will impose major difficulties. In conjunction with the revision in crop year definition, this could require companies to maintain yield history indefinitely. For example, a farmer many have had a policy five years ago but production history may have to go back 30 or 40 calendar years to accumulate 10 crop years of actual yields.

Response: This provision does not affect the continuity requirements applicable to annual production reports provided by the insured. However, it does allow FCIC to use production history on file prior to a break in continuity of insurance coverage. FCIC reserves the latitude of implementing this provision by issuing procedures outlining records identification (tracking) methods to correctly assign such production. FCIC recently implemented a policyholder tracking system based on social security/employee identification numbers and may implement this provision in the future. Use of this procedure keeps an insured who may have had a low APH yield from canceling insurance for one year in order to achieve a fresh start, and thus, gain a higher yield.

List of Subjects in 7 CFR Part 400

Actual Production History Coverage Plan, Crop Insurance.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended by the Omnibus Budget Reconciliation Act of 1993, the Federal Crop Insurance Corporation hereby amends 7 CFR part 400 by adding a new subpart to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart G—Actual Production History

Sec.

400.51 Availability of actual production history program.
400.52 Definitions.
400.53 Yield certification and acceptability.
400.54 Submission and accuracy of production reports.
400.55 Qualifications for actual production history coverage program.
400.56 Administrative appeal exhaustion.
400.57 OMB control numbers.

Subpart G—Actual Production History

Authority: 7 U.S.C. 1506, 1516.

§ 400.51 Availability of actual production history program.

An Actual Production History (APH) Coverage Program is offered under the provisions contained in the following regulations:

7 CFR 401.110—Almond Endorsement
7 CFR part 405—Apple Crop Insurance
7 CFR 401.118—Canning and Processing Bean Endorsement
7 CFR part 409—Arizona-California Citrus Crop Insurance
7 CFR 401.127—Cranberry Endorsement
7 CFR part 433—Dry Beans Crop Insurance
7 CFR 401.116—Flaxseed Endorsement
7 CFR part 415—Forage Production Corp Insurance
7 CFR 401.130—Grape Endorsement
7 CFR part 455—Macadamia Nut Crop Insurance
7 CFR 401.126—Onion Endorsement
7 CFR part 447—Popcorn Crop Insurance
7 CFR part 403—Peach Crop Insurance
7 CFR 401.140—Pear Endorsement
7 CFR part 416—Pea Crop Insurance
7 CFR 401.146—Fresh Plum Endorsement
7 CFR part 422—Potato Crop Insurance
7 CFR part 450—Prune Crop Insurance
7 CFR 401.123—Safflower Seed Endorsement
7 CFR 401.133—Sugarcane Endorsement
7 CFR part 430—Sugar Beet Crop Insurance
7 CFR 401.124—Sunflower Seed Endorsement
7 CFR part 437—Sweet Corn Crop Insurance
7 CFR part 441—Table Grape Crop Insurance
7 CFR 401.129—Guaranteed Tobacco Endorsement
7 CFR 401.114—Canning and Processing Tomato Endorsement
7 CFR part 454—Guaranteed Production Plan of Fresh Market Tomato
7 CFR part 446—Walnut Crop Insurance
7 CFR part 457—Common Crop Insurance Regulations; and all special provisions thereto unless specifically excluded by the special provisions.

The APH program operates within limits prescribed by, and in accordance with, the provisions of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), only on those crops identified in this section in those areas where the Actuarial Table provides coverage. Except when in conflict with this subpart, all provisions of the applicable crop insurance contract for these crops apply.

§ 400.52 Definitions.

In addition to the definitions contained in the crop insurance contract, the following definitions apply for the purposes of the APH Coverage Program:

(a) *APH*—Actual Production History.

(b) *Actual yield*—The yield per acre for a crop year calculated from the production records or claims for indemnities. The actual yield is determined by dividing total production (which includes harvested and appraised production) by planted acres for annual crops or by insurable acres for perennial crops.

(c) *Adjusted yield*—The transitional or determined yield reduced by the applicable percentage for lack of records. The adjusted yield will equal 65 percent of the transitional or determined yield, if no producer records are submitted; 80 percent, if records for one year are submitted; and 90 percent, if two years of records are submitted.

(d) *Appraised production*—Production determined by the Agricultural Stabilization and Conservation Service (ASCS), the FCIC, or a company reinsured by the FCIC, that was unharvested but which reflected the crop's yield potential at the time of the appraisal. For the purpose of APH "appraised production" specifically excludes production lost due to uninsurable causes.

(e) *Approved APH yield*—A yield, calculated and approved by the verifier, used to determine the production guarantee and determined by the sum of the yearly actual, assigned, and adjusted or unadjusted transitional or determined yields divided by the number of yields contained in the database. The database may contain up to 10 consecutive crop years of actual and or assigned yields. At least four yields will always exist in the database.

(f) *Assigned yield*—A yield assigned by FCIC in accordance with the crop insurance contract, if the insured does not file production reports as required by the crop insurance contract. Assigned yields are used in the same manner as actual yields when calculating APH yields except for purposes of the Nonstandard Classification System (NCS).

(g) *Base period*—Ten consecutive crop years (except peaches, which have a five-year base period) immediately preceding the crop year defined in the insurance contract for which the approved APH yield is being established (except for sugarcane, which begins the calendar year preceding the immediate previous crop year defined in the insurance contract).

(h) *Continuous production reports*—Reports submitted by a producer for each crop year that the unit was planted to the crop and for the most recent crop year in the base period.

(i) *Crop year*—Defined in the crop insurance contract, however, for APH purposes the term does not include any year when the crop was not planted or when the crop was prevented from being planted by an insurable cause. For example, if an insured plants acreage in a county to wheat one year, that year is a crop year in accordance with the policy definition. If the land is summerfallowed the next calendar year, that calendar year is not a crop year for the purpose of APH.

(j) *Database*—A minimum of four years up to a maximum of ten crop years of production data used to calculate the approved APH yield.

(k) *Determined yield (D-yield)*—An estimated year for certain crops, which can be determined by multiplying an average yield for the crop (attained by using data available from The National Agricultural Statistics Service (NASS) or comparable sources) by a percentage established by the FCIC for each county.

(l) *Master yields*—Approved APH yields, for certain crops and counties as initially designated by the FCIC, based on a minimum of four crop years of production records for a crop within a county.

(m) *New producer*—A person who has not been actively engaged in farming for a share of the production of the insured crop for more than two crop years.

(n) *Production report*—A written record showing the insured crop's annual production and used to determine the insured's yield for insurance purposes. The report contains yield history by unit, if applicable, including planted acreage for annual crops, insurable acreage for perennial crops, and harvested and appraised production for the previous crop years. This report must be supported by written verifiable records, measurement of farm stored production, or by other records of production approved by FCIC on an individual basis. Information contained in a claim for indemnity is considered a production report for the crop year for which the claim was filed.

(o) *Production Reporting Date (PRD)*—The PRD is contained in the crop insurance contract and is the last date production reports will be accepted for inclusion in the database for the current crop year.

(p) *Transitional yield (T-Yield)*—An estimated yield, for certain crops, generally determined by multiplying the ASCS program yield by a percentage determined by the FCIC for each county and provided on the actuarial table to be used in the APH yield calculation process when less than four consecutive crop years of actual or assigned yields are available.

(q) *Verifiable records*—Contemporaneous records of acreage and production provided by the insured, which may be verified by FCIC through an independent source, and which are used to substantiate the acreage and production that have been reported on the production report.

(r) *Verifier*—A person authorized by the FCIC to calculate approved APH yields.

(s) *Yield variance tables*—Tables for certain crops that indicate unacceptable yield variations and yield trends which will require determination of the APH yield by the FCIC.

§ 400.53 Yield certification and acceptability.

(a) Production reports must be provided to the crop insurance agent no later than the production reporting date for the crop insured.

(1) Production reports must provide an accurate account of planted acreage for annual crops or insurable acres for perennial crops, as well as harvested and appraised production by unit.

(2) The insured must certify the accuracy of the information.

(3) Production reported for more than one crop year must be continuous. A year in which no acreage was planted to the crop on a unit or no acreage was planted to a practice, type, or variety requiring an APH yield will not be considered a break in continuity. Assigned yields, at the discretion of the FCIC, may be used to maintain continuity of yield data of file. Production on uninsured (for those years a crop insurance policy under the Federal Crop Insurance Act is in effect) or uninsurable acreage (for other years of the period) will not be used to determine APH yield unless production from such acreage is commingled with production from insured or insurable acreage.

(b) Production reports and supporting records are subject to audit or review to verify the accuracy of the information certified. Production and supporting records may be reviewed and verified if a claim for indemnity is submitted on the insured crop. The reported yield is subject to revision, if needed, so that the claim conforms to the records submitted at that time.

(1) Inaccurate production reports or failure to retain acceptable records shall result in the verifier combining optional farm units and recomputing the approved APH yield. These actions shall be taken at any time after reporting or record discrepancies are identified and may result in reduction of the approved APH yield for any calendar year.

(2) Records must be provided by the insured at the time of an audit, review, or as otherwise requested, to verify that the acreage and production certified are accurate. Records of any other person having shares in the insured crop, which are used by the insured to establish the approved APH yield, must also be provided upon request.

(3) In the event acreage or production data certified by two or more persons sharing in the crop on the same acreage is different, the verifier shall, at the verifier's discretion, determine which acreage and production data, if any, will be used to determine the approved APH yield. If the correct acreage and production cannot be determined, the data submitted will be considered unacceptable by the verifier for APH purposes.

(4) Failure of the producer to report acreage and production completely and accurately may result in voidance of the crop insurance contract, as well as criminal or civil false claims penalties pursuant to applicable Federal criminal or civil statutes.

§ 400.54 Submission and accuracy of production reports.

(a) The insured is solely responsible for the timely submission and certification of accurate, complete production reports to the agent. Production reports must be provided for all planted units.

(b) Records may be requested by the FCIC, or an insurance company reinsured by the FCIC, or by anyone acting on behalf of the FCIC or the insurance company. The insured must provide such records upon request.

(c) The agent will explain the APH Program to insureds and prospective insureds. When necessary, the agent will assist the insured in preparation of production reports. The agent will determine the adjusted or unadjusted transitional or determined yields in accordance with § 400.54(b). The agent will review the production reports and forward them to the verifier, along with any requested and required supporting records for determination of an approved APH yield.

(d) The verifier will determine if the certified production reports are acceptable and calculate the approved APH yield.

§ 400.55 Qualification for actual production history coverage program.

(a) The approved APH yield is calculated from a database containing a minimum of four yields and will be updated each subsequent crop year. The database may contain a maximum of the 10 most recent crop years and may include actual, assigned, and adjusted or unadjusted T or D-Yields. T or D-Yields, adjusted or unadjusted, will only occur in the database when there are less than four years of actual and/or assigned yields.

(b) The insured may be required to provide production records to determine the approved APH yield, if production records for the most recent crop year are available. If acceptable records of actual production are provided, the records must be continuous and contain at least the most recent crop year's actual yield.

(1) If no acceptable production records are available, the approved APH yield is the adjusted T or D-Yield (65 percent of T or D-Yield).

(2) If acceptable production records containing information for only the most recent crop year are provided, the three T or D-Yields adjusted by 80 percent will be used to complete the minimum database and calculate the approved APH yield.

(3) If acceptable production records containing information for only the two most recent crop years are provided, the two T or D-Yields adjusted by 90 percent and the two actual yields will be used to complete the database and calculate the approved APH yield.

(4) If acceptable production records containing information for only the three most recent crop years are provided, the three actual yields and one unadjusted T or D-Yield are used to complete the database and calculate the approved APH yield.

(5) When the database contains four or more (up to ten) continuous actual yields, the approved APH yield is a simple average of the actual yields.

(6) New producers may have their approved APH yields based on unadjusted T or D-Yields or a combination of actual and unadjusted T or D-Yields.

(7) Producers who add land or new practice, types and varieties to their farming operations and who do not have available records for the added land, practice, types or varieties may have approved APH yields for the added land, practice, types or varieties that are based on adjusted or unadjusted T or D-Yields as determined by FCIC.

(8) If the producer's crop is destroyed or if it produces a low actual yield due to insured causes of loss, the resulting average yield may qualify for catastrophic yield adjustment according to FCIC guidelines. APH yields qualifying for catastrophic yield adjustment may be adjusted to mitigate the effect of catastrophic years. Premium rates for approved APH yields, which are adjusted for catastrophic years, may be based on the producer's APH average yield prior to the catastrophic adjustment or such other basis as determined appropriate by FCIC.

(c) If *no insurable acreage of the insured crop is planted* for a year, a production report indicating zero planted acreage will maintain the continuity of production reports for APH record purposes and that calendar year will not be included in the APH yield calculations.

(d) Actual yields calculated from the claim for indemnity will be entered in the database. The resulting average yield will be used to determine the premium rate and approved APH yield, at the discretion of FCIC.

(e) Optional units are not available to an insured who does not provide acceptable production reports for at least the most recent crop year with which to calculate an approved APH yield.

(f) FCIC may determine approved APH yields for designated crops in the following situations:

(1) If less than four years of yield history is certified and T or D-Yields are not provided in the actuarial documents,

(2) If actual yield exceed tolerances specified in yield variance tables, and

(3) For perennial crops:

(i) If significant upward or downward yield trends are indicated;

(ii) If tree or vine damage, or cultural practices will reduce the production level;

(iii) if more than two percent of the trees or vines have been removed within the last two years; or

(iv) If yield trends are evident and yields greater than the average yield are requested by the insured.

(g) APH yields will not be approved the first insurance year on perennial crops until an inspection acceptable to FCIC has been performed and the acreage is accepted for insurance purposes in accordance with the crop insurance contract.

(h) APH Master Yields may be established whenever crop rotation requirements and land leasing practices limit the yield history available. FCIC will establish crops and locations for which Master Yields are available. To qualify, the producer must have at least four recent continuous crop years' annual production reports and must certify the authenticity of the production reports of the insured crop. Master Yields are based on acreage and production history from all acreage of the insured crop in the county in which the operator has shared in the crop's production.

(i) FCIC may use any production report available under the provisions of any crop insurance contract, whether continuous or not, involving the interests of the person's insured crops in determining the approved APH yield.

§ 400.56 Administrative appeal exhaustion.

The insured may appeal the approved APH yield in accordance with the procedures contained in 7 CFR part 400, subpart J. Administrative remedies through the appeal process must be exhausted prior to any action for judicial review. The approved APH yield determined as a result of the appeal process will be the yield applicable to the crop year.

§ 400.57 OMB control numbers.

OMB control numbers are contained in 7 CFR part 400, subpart H.

Done in Washington, D.C., on September 8, 1994.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 94–23035 Filed 9–16–94; 8:45 am]

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RESOLUTION TRUST CORPORATION

12 CFR Part 1640

RIN 3205–AA25

Marketing and Selling Real Property on an Individual Basis and Disposition of Real Estate-Related Assets

AGENCY: Resolution Trust Corporation.

ACTION: Interim rule with request for comments.

SUMMARY: The Resolution Trust Corporation (RTC) is hereby adopting an interim rule with request for comments to implement the marketing provisions contained in subsections (w)(2) and (3) of section 21A of the Federal Home Loan Bank Act (FHLBA), recently added by section 3(a) of the Resolution Trust Corporation Completion Act. This rule provides policies and procedures required under subsections (w)(2) and (3) for the marketing of real estate owned (REO) assets on an individual basis and for the disposition of REO assets with a book value of more than $400,000 and non-performing real estate loans with a book value of more than $1 million.

This rule supersedes the marketing policy for real estate owned, entitled "Individual REO Sales," adopted by the RTC on April 15, 1993.

The RTC is seeking comments on all aspects of the interim rule.

DATES: This rule is effective September 19, 1994. Comments must be submitted on or before October 19, 1994.

ADDRESSES: Written comments regarding the interim rule should be addressed to John M. Buckley, Jr., Secretary, Resolution Trust Corporation, 801 17th Street, N.W., Washington, D.C. 20434–0001. Comments may be hand delivered to room 321 on business days between the hours of 9:00 a.m. and 5:00 p.m. Comments may also be inspected in the Public Reading Room, 801 17th Street, N.W., during the same business hours. Phone number: (202) 416–6940; FAX number: (202) 416–4753.

FOR FURTHER INFORMATION CONTACT: William I. Jones, Counsel, RTC Legal Division, (202) 736–3106; Anne P. Depenbrock, Senior Attorney, (202) 736–0198; Kymberly Copa, Senior Attorney, (202) 736–3087; Steve A. Galloway, Small Investor Program Contact, (202) 416–4210; James R. Wigand, Director, Office of Asset and SAMDA Program Management, (202) 416–7133; Henry W. Abbot, Senior Asset Specialist, (202) 416–7132; Joseph W. Schantz, Asset Specialist, (202) 416–7302.

SUPPLEMENTARY INFORMATION:

Background

In August 1989, Congress enacted section 501 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, (FIRREA), adding section 21A to the FHLBA (12 U.S.C. 1441a), and establishing the RTC. Pursuant to section 21A(b) of the FHLBA, the RTC has the duty to manage and resolve failed savings associations for which it is appointed conservator or receiver and to conduct its operations in a manner which maximizes the return from the sale of institutions or their assets, makes efficient use of funds, and minimizes losses in the resolution of institutions. In addition, the RTC is required to resolve all failed thrifts by the "least costly" method. See section 13(c)(4) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1823(c)(4)), applicable to the RTC pursuant to section 21A(b)(4) of the FHLBA (12 U.S.C. 1441a(b)(4)).

The Resolution Trust Corporation Completion Act

The RTC Completion Act was signed by the President and took effect on December 17, 1993 (Pub. L. 103–204). Section 3(a) of the RTC Completion Act amended section 21A of the FHLBA by adding subsection (w), a list of 21 managment reforms for the RTC. Implementation of two of these reforms is the subject of this interim rule.

Subsection (w)(2)—Individual Marketing Period

Subsection (w)(2) of section 21A of the FHLBA requires the RTC to market real property on an individual basis for at least 120 days before making the property available on a portfolio basis or in a multi-asset sales initiative. Subsection (w)(2), unlike subsection (w)(3) discussed below, applies only to REO and not to loans or any other types of assets. This provision applies to REO in which a thrift under the RTC's jurisdiction holds, directly or indirectly, an undivided or controlling interest. By including property-held indirectly by a thrift, this provision applies to subsidiary property as well.

The provision excepts real property transferred in connection with a resolution in which the acquirer purchases a significant portion of a failed institution's assets and assumes either a significant portion of the failed institution's liabilities or acts as agent for the RTC in paying the claims of insured depositors. In other words, this exception is designed to extend not only to the standard purchase and assumption transaction, but also to an insured deposit transfer where the acquiring institution does not actually assume the deposit liabilities. Another exception exempts the transfer of real property by the original pass-through receiver to a de novo institution organized by the RTC pursuant to section 11(d)(2)(F) of the FDIA or section 21A(b)(10)(A)(iv) of the FHLBA.

Subsection (w)(2) requires the RTC to promulgate: (1) Regulations which require the RTC to justify in writing the sale of any real property asset on a portfolio basis or in a multi-asset initiative after the 120-day individual marketing period, and (2) regulations to carry out other requirements of the individual marketing provision.

Subsection (w)(3)—Marketing Procedures for Certain Assets

With respect to non-performing real estate loans with a book value of more than $1 million and real property with a book value of more than $400,000, subsection (w)(3) establishes several marketing procedures for the RTC. Subsection (w)(3)(A) prohibits the RTC from selling such assets unless:

(1) the RTC has assigned the management and disposition of such asset to a qualified person or entity to:

(a) analyze each asset and consider alternative disposition strategies;

(b) develop a written management and disposition plan; and

(c) implement that plan for a reasonable period of time; or

(2) the RTC determines in writing that a bulk transfer of the asset would maximize the net recovery, while providing opportunity for broad participation by qualified bidders, including minority- and women-owned businesses.

Subsection (w)(3) permits the RTC to define "asset" to include properties or loans which, although legally discrete, have sufficiently common characteristics that they may logically be treated as a single asset. Such a definition permits the RTC to provide a single asset management and disposition plan for several assets. The statute also expressly allows the RTC to define "qualified person" to include employees assigned to the RTC and Thrift Depositor Protection Oversight Board (TDPOB) employees. Implementation of these definitions requires the RTC to promulgate regulations.

In addition to the exceptions created by the $400,000 and $1 million thresholds for real estate and non-performing real estate loans, respectively, subsection (w)(3) establishes two exceptions to the requirements of subsection (w)(3)(A). First, as under subsection (w)(2), subsection (w)(3)(C) exempts assets transferred in connection with a standard purchase and assumption agreement or an insured deposit transfer agreement where a significant portion of the failed institution's assets are transferred, as well as assets transferred to a de novo institution organized by the RTC under section 11(d)(2)(F) of the FDIA or section 21A(b)(10)(A)(iv) of the FHLBA. Second, subsection, (w)(3)(C) permits the RTC to dispose of assets with book values above the threshold, without complying with the requirements of (w)(3)(A), whenever the RTC determines, in writing, that such a disposition will bring a greater return.

Relationship to the Small Investor Program

Congress considered the needs of smaller investors in framing the provisions contained in sections 21A(w)(2) and (3) of the FHLBA. The needs of small investors were addressed by a) an emphasis on individual marketing and sales of significant assets, and b) the structuring of bulk transactions in a fashion which increases the participation by bidders with moderate levels of capital.

These new statutory provisions in many ways reflect the programs begun by the RTC in the spring of 1993 to enhance opportunities for individual and small investors. On April 13, 1993, the RTC announced the establishment of the Small Investor Program on an interim basis to ensure that RTC's assets are available for sale individually to small investors with moderate levels of capital. By memorandum dated April 15, 1993, entitled "Individual REO Sales," the RTC adopted a marketing policy for REO similar to the procedure outlined in section 21A(w)(2) of the FHLBA. That policy required the active marketing of most REO for 120 days prior to its inclusion in any multi-asset sales initiative. The procedures adopted in this interim rule replace the previous policy.

Small Investor Program Offices have been established in the RTC's Washington, D.C. headquarters and in each of the RTC's six Field Offices with staff dedicated to addressing the needs of small investors. The Small Investor Program targets individual investors and small investor groups, including Minority and Women-Owned Businesses (MWOB) with the capacity to purchase: (i) REO assets and portfolios valued up to $5 million, (ii) loan pools up to $10 million, (iii) subsidiaries valued from $5 thousand to $30 million, and (iv) equity investments from $4 million to $9 million in joint venture transactions.

The Small Investor Program was instrumental in the implementation of two "Equity Partnership" Programs designed to increase opportunities for the small investor: the Judgments, Deficiencies, and Charge-Offs (JDCs) Program and the "S-Series" Program. These loan disposition initiatives have encouraged greater participation from small investors by reducing asset pool sizes and lowering equity requirements and other fees.

The RTC frequently conducts non-performing loan auctions to achieve broad market exposure and obtain the best price through the competitive bidding process. However, the average size of portfolios has been decreased and are more geographically limited to allow small investors a greater opportunity to compete for these assets. In addition, the overall required bidding deposit has been reduced from $100,000 to $50,000 to increase the participation of small investors.

Loan portfolio offerings available through the Small Investor Program have become smaller, more geographically segmented, and the pools of assets are structured by specific asset type to appeal to small investors. For each loan offering, a comprehensive and specifically targeted marketing campaign is implemented to promote the offering and attract a sufficient number of potential purchasers to the sale.

Localized real estate auctions are held more frequently and are more geographically focused to increase opportunities for small investors to purchase assets.

Sealed Bid offerings are available through the Small Investor Program which allow investors to value independently an individual asset or package of assets and submit a confidential bid along with other interested parties. Comprehensive sales brochures are available which provide detailed property and bidding information.

Seminars are conducted frequently to inform potential small investors of the goals of the Small Investor Program and the opportunities available to purchase assets of the Resolution Trust Corporation.

Initiatives such as these fulfill the new legislation's goal of providing opportunities to a broad range of qualified bidders and will be continued throughout the remaining life of the RTC. In addition, these initiatives undertaken by the Small Investor Program are consistent with the original duties mandated by section 21A(b)(3) of the FHLBA, (i.e., to dispose of assets from failed savings associations, obtain the maximum value for those assets, and minimize the cost of resolutions to taxpayers.)

Description and Explanation of the Interim Rule

Subpart A—Marketing and Selling Real Property on an Individual Basis for 120 Days

Section 1640.1 describes the purposes and scope of Subpart A of the interim rule, implementing section 21A(w)(2) of the FHLBA.

This Subpart requires the RTC to comply with new individual marketing and sales requirements for real property assets held by the RTC on or after December 17, 1993, unless they were the subject of a contract to sell or other disposition contract on that date. The RTC is relying on the effective date of the RTC Completion Act to determine the property affected by this new provision; nothing in the legislation suggests that such contracts should be abrogated.

Section 1640.2 contains the definitions of significant terms used in this Subpart. Consistent with the requirement that the RTC has an undivided or controlling interest in the asset subject to this provision, the definition of "real property" expressly excludes a time share interest, a space lease, or a security interest in property, including a mortgage or deed of trust.

When read together, subsections (w)(2) and (w)(3) of section 21A of the FHLBA indicate that Congress intended the concept of a single asset to include two or more legally discrete assets which are so interconnected as to constitute a single economic unit. On that basis, the RTC has defined "single real property asset" to allow for the inclusion of more than one asset in which the RTC holds an undivided or controlling interest, if such assets may logically be treated as a common asset because they have at least two common characteristics. Some examples of such characteristics are contiguity, economic integration, shared utility systems, former common ownership or operation, common infrastructure improvements, and common recreational facilities.

Subsection (c) of section 1640.2 defines the term "market" as providing notice to the public of the availability of the property for sale. This definition

encompasses a variety of marketing techniques, thereby permitting the RTC the discretion to choose the technique which best suits a particular asset. Marketing of an asset involves exposure to a target market through a variety of methods. These methods may include, without limitation, advertising in local, regional or national newspapers or other publications, advertising in trade journals for specialized properties such as hotels, distributing of professional marketing materials, or listing of the property with a broker or other contractor with the expertise to expose the property extensively in its target market.

Section 1640.3(a) of the interim rule requires the RTC to market and sell real property assets solely on an individual basis for 120 days or until an asset is sold under subsection (b) of the same section. During the initial 120-day marketing period, however, the RTC may promote the sale of more than a single real property asset in a single promotional medium. In addition, during that marketing period, that the RTC may sell or otherwise dispose of, a single real property asset in an open or sealed-bid auction, or other multi-asset marketing program, so long as bids are received and accepted only for individual properties.

Section 1640.4 provides that upon the expiration of the 120-day period, any single real property asset which remains unsold may be disposed of in connection with a portfolio sale or a multi-asset sales initiative under section 1640.4, only if the RTC determines in writing that such a disposition would likely maximize the net recovery to the RTC. As used in this rule, a portfolio sale or multi-asset sales initiative refers to the method of asset disposition of two or more assets (without sufficiently common characteristics to be treated as a single asset) where the RTC permits the sale of two or more assets for one indivisible price.

Section 1640.5 sets forth the exceptions to the individual marketing and sales requirement. The provisions of section 21A(w)(2) of the FHLBA, as implemented by the interim rule, do not apply to real property transferred as part of so-called "purchase-and-assumption" agreements, i.e., where assets are sold simultaneously with a resolution in which a buyer (i.e., an acquiring financial institution) purchases a significant proportion of the assets and either assumes a significant proportion of the liabilities or acts as agent of the RTC for purposes of paying insured deposits. The RTC has interpreted this exemption to apply to any single real property asset for which the RTC has granted the acquiring financial institution an option to purchase the asset, although, if the option expires and the asset remains the property of the RTC, then section 21A(w)(2) of the FHLBA and these implementing regulations would then apply to the property. Also exempted from the individual marketing and sales requirement are single real property assets which are transferred to de novo institutions, organized by the RTC pursuant to section 11(d)(2)(F) of the FDIA or section 21A(b)(10)(A)(iv) of the FHLBA.

Subpart B—Disposition of Real Estate-Related Assets

Section 1640.11 of the interim rule describes the purpose and scope of this Subpart, i.e., to establish the methods by which the RTC intends to comply with the disposition provisions of section 21A(w)(3) of the FHLBA applicable to real estate-related assets held by the RTC on or after December 17, 1993, which are not subject to a contract to sell or other disposition contract as of that date. Subsection (c) of section 1640.11 recognizes that the RTC may have taken actions, prior to the effective date of this Subpart, to satisfy the new statutory requirements, which should be used to determine the RTC's compliance with those requirements.

The requirements of Subpart B apply only to a single real property asset or non-performing single real estate-related loan, which are considered "real estate-related assets" for these purposes. Under section 1640.12, the RTC defines relevant terms for purposes of Subpart B, such as real property, single real property asset, real estate-related asset, and non-performing single real estate-related loan. A "single real property asset" is defined as a real property asset with a book value of more than $400,000 as determined by the RTC, in which the RTC has an undivided or controlling interest. As under Subpart A, two or more separate real property assets, each with a value of more than $4,000, may be logically treated as a single real property asset if they have at least two common characteristics, as described above. A "non-performing single real estate-related loan" is a loan or group of loans with sufficiently common characteristics, each with a book value of more than $1 million as determined by the RTC, in which the RTC holds an undivided or controlling interest, secured by real property, which is more than 90 days delinquent.

The definition of "non-performing single real estate-related loan" includes a participation loan whenever the RTC in fact controls the management and disposition of that loan, and the book value of the entire loan, not just the RTC's share, is greater than $1 million. However, the definition does not include a participation loan which the RTC does not control, no matter how large the RTC's ownership interest is in the loan.

Section 1640.13 requires the RTC to assign the responsibility for the management and disposition of a real estate-related asset to a qualified person or entity prior to disposition of the asset, unless the RTC makes a written determination that a bulk sale would likely maximize net recovery to the RTC and provide broad participation by qualified bidders, including minority- and women-owned businesses. Under section 1640.12, a "qualified person or entity" for a real estate-related asset is defined as an employee of the RTC or the TDPOB or an asset management contractor of the RTC who meets the minimum qualifications established by the RTC for managing and analyzing assets of the same type. The qualified person or entity assigned to the property must analyze each individual asset, consider alternative disposition strategies, recommend a disposition strategy to maximize net recovery to the RTC, develop a written management and disposition plan, and implement that plan for a reasonable period of time.

Alternative disposition strategies for REO may include, at a minimum, sale on an individual basis via broker and sale on an individual basis via auction or sealed bid. For non-performing real estate loans, disposition strategies usually include modification, foreclosure or other legal action, compromise and settlement, and individual sale via auction or sealed bid.

Like Subpart A, Subpart B does not apply to real estate-related assets sold simultaneously with a purchase-and-assumption agreement (including option agreements during the duration of the option) or transferred by the RTC to a de novo institution (discussed more fully above under Subpart A). Subpart B, by its terms, does not apply to individual real estate assets with a book value of $400,000 or less or individual non-performing real estate loans with a book value of $1 million or less. In addition, Subpart B does not apply to assets meeting these thresholds, if the RTC determines that a disposition not in conformity with Subpart B and section 21A(w)(3) of the FHLBA would bring a greater return.

Finally, subsection (w)(3)(D) provides that no provision in (w)(3) shall supersede the requirements of subsection (w)(2). Section 1640.15

reiterates this principle of implementation by providing that nothing contained in Subpart B supersedes the requirements of (w)(2) or Subpart A. Consequently, all real property with a book value of more than $400,000 must be marketed on an individual basis for a minimum of 120 days in conformity with subsection (w)(2) and Subpart A of these regulations.

Administrative Procedure Act

The RTC is adopting this rule as an interim rule. It will be effective immediately upon publication in the Federal Register without the usual notice and comment period or delayed effective date generally provided for in the Administrative Procedure Act, 5 U.S.C. 553. For the most part, this rule implements the express language of section 21A(w) (2) and (3) of the FHLBA, as recently added by the RTC Completion Act. Promulgation of the rule on an expedited basis is necessary to permit the immediate implementation of these new provisions in order to avoid any additional losses that could occur due to a delay in the sales of assets in connection with the resolution of failed thrifts pending the usual delayed effective date. Thus, the RTC finds that the benefits to the public in adopting the interim rule outweigh any possible harm resulting from not seeking comment on the proposed rule in advance of its effective date. The RTC actively solicits comments on this interim rule and will consider those comments in the adoption of the rule as final.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., the following initial regulatory flexibility analysis is provided:

1. Reasons, objectives, and legal bases underlying the interim rule. These elements have been discussed above in the Supplementary Information section.

2. Small entities to which the rule would apply. This rule applies only to procedures for the RTC's marketing and disposition of certain types of assets.

3. Impact of the interim rule on small businesses. This rule imposes no burden on small businesses. Rather, as part of the RTC's Small Investor Program, it is intended to offer small businesses greater opportunities to acquire certain types of assets from the RTC.

4. Overlapping or conflicting federal rules. There are no known federal rules that overlap, duplicate, or conflict with the interim rule.

5. Alternatives to the interim rule. The RTC has not identified alternatives that would be less burdensome to small businesses and yet effectively accomplish the objectives of the interim rule because it imposes no burden on small businesses.

Request for Public Comment

The RTC is issuing this interim rule to implement immediately statutory direction to market and sell real property on an individual basis for 120 days and to provide procedures favoring the individual management and disposition of larger real estate-related assets, unless a bulk transaction would likely maximize the net recovery to the RTC. Nonetheless, the RTC is hereby requesting comment on all aspects of this interim rule during a 30-day comment period.

List of Subjects in 12 CFR Part 1640

Savings associations.

For the reasons set out in the preamble, the RTC hereby adds Part 1640 to title 12, chapter XVI of the Code of Federal Regulations, to read as follows:

PART 1640—MARKETING AND SALE OF REAL ESTATE AND REAL ESTATE-RELATED ASSETS

Subpart A—Marketing and Selling Real Property on an Individual Basis for 120 Days

Sec.

1640.1 Purpose and scope.
1640.2 Definitions.
1640.3 Procedure during initial 120-day marketing period.
1640.4 Procedure after initial 120-day marketing period.
1640.5 Exceptions.

Subpart B—Disposition of Real Estate-Related Assets

1640.11 Purpose and scope.
1640.12 Definitions.
1640.13 Procedure for disposition of real estate-related assets.
1640.14 Exceptions.
1640.15 Coordination with subpart A of this part and section 21A(w)(2) of the Federal Home Loan Bank Act.

Authority: 12 U.S.C. 1441a (w)(2) and (w)(3).

Subpart A—Marketing and Selling Real Property on an Individual Basis for 120 Days

§ 1640.1 Purpose and scope.

(a) This subpart provides the implementing regulations required by section 21A(w)(2) of the Federal Home Loan Bank Act, which requires the Resolution Trust Corporation (RTC) to market and sell real property assets solely on an individual basis for an initial 120-day marketing period and which, after such initial 120-day marketing period, further requires the RTC to justify in writing the disposition of real property assets on a portfolio basis or as part of a multi-asset sales initiative.

(b) This subpart applies with respect to all single real property assets held by the RTC on or after December 17, 1993; provided, however, that this subpart shall not apply with respect to any such assets which were the subject of a contract to sell or other disposition contract on December 17, 1993.

§ 1640.2 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Controlling interest,* with respect to a single real property asset, shall mean an ownership interest which gives the RTC the ability to direct and control the disposition of such asset;

(b) *Initial 120-day marketing period,* with respect to a single real property asset, shall mean the 120-day period beginning on the date on which the RTC first markets such asset on an individual basis;

(c) *Insured depository institution* shall have the meaning given such term in section 3(c) of the Federal Deposit Insurance Act;

(d) *Market* shall mean to provide notice to the public of the availability of a single real property asset for sale through methods calculated to reach persons who can reasonably be expected to have an interest in acquiring such asset. Examples of methods which the RTC may employ for initiating marketing include, but are not limited to, the following:

(1) Listing of such an asset with a real estate broker, multiple listing service or contractor qualified to market the asset; and

(2) Advertising the availability of such an asset in a general interest publication, such as a local, regional or national newspaper, or in a specialized publication, such as a business or trade publication or marketing brochure;

(e) *Portfolio sale* or *multi-asset sales initiative* shall mean a method of asset disposition in which the RTC permits the purchase, or other disposition, of two or more single real property assets for one indivisible price;

(f) *Real property* shall mean improved or unimproved property held in fee simple or pursuant to a ground lease, a leasehold in connection with shares in a cooperative corporation or similar entity and any other property constituting real property within the meaning of the law of the State (as defined in section 3 of the Federal Deposit Insurance Act) in which the property is situated. The term shall not

mean a time share interest, a space lease or a security interest in property, including a mortgage or deed of trust;

(g) *RTC* or *Resolution Trust Corporation* shall mean the Resolution Trust Corporation, established in section 21A of the Federal Home Loan Bank Act, in its corporate capacity, its capacity as conservator, its capacity as receiver, or its capacity as the owner of a subsidiary of a depository institution under conservatorship or receivership, or in any combination thereof;

(h) *Single real property asset* shall mean—

(1) A legally separate and distinct real property asset, in which the RTC holds an undivided or controlling interest; or

(2) Two or more legally separate and distinct real property assets, in which the RTC holds an undivided or controlling interest, which may be logically treated as a single asset because the assets have at least two common characteristics, including contiguity, economic integration, shared utility systems, former common ownership, former common operation, common infrastructure improvements, common recreational facilities and other similar characteristics;

(i) *Undivided interest*, with respect to a single real property asset, shall mean an interest which gives the RTC complete ownership and control of the disposition of such asset; and

(j) *Sale* shall mean a disposition by sale or otherwise, whereby the RTC transfers its interest in a single real property asset to another person or entity.

§ 1640.3 Procedure during initial 120-day marketing period.

(a) *Marketing.* (1) The RTC shall market a single real property asset on an individual basis for 120 days or until such asset is sold in accordance with paragraph (b) of this section during the initial 120-day marketing period. Provided, however, nothing contained in this paragraph shall be construed to prohibit the RTC from promoting the sale on an individual basis, in accordance with paragraph (b), of this section, of more than one single real property asset in the same marketing materials.

(2) Any actions, which otherwise satisfy the standards of this subpart, undertaken by the RTC to market a single real property asset prior to September 19, 1994 shall be used to determine compliance with this subpart.

(b) *Disposition.* During the initial 120-day marketing period for a single real property asset, the RTC shall only sell or otherwise dispose of, such asset solely on an individual basis, and the RTC shall not dispose of such asset in connection with a portfolio sale or a multi-asset sales initiative. Provided, however, nothing contained in this paragraph shall be construed to prohibit the RTC from selling, or otherwise disposing of, a single real property asset during such period in an open or sealed-bid auction, or other multi-asset marketing program, in which bids are received and accepted only on an individual basis.

§ 1640.4 Procedure after initial 120-day marketing period.

With respect to a single real property asset which remains unsold after the initial 120-day marketing period for such asset, the RTC may only dispose of such asset in connection with a portfolio sale or a multi-asset sales initiative if the RTC determines in writing that such disposition of the asset would maximize the net recovery to the RTC.

§ 1640.5 Exceptions.

The provisions of this subpart and section 21A(w)(2) of the Federal Home Loan Bank Act shall not apply:

(a) To single real property assets which are sold simultaneously with a resolution in which a buyer purchases a significant proportion of the assets and either assumes a significant proportion of the liabilities or acts as agent of the RTC for purposes of paying insured deposits of an institution described in section 21A(b)(3)(A) of the Federal Home Loan Bank Act. (This exemption applies to any single real property asset for which the RTC has granted the buyer an option to purchase; provided, however, if at the expiration of such option the asset remains the property of the RTC, then the provisions of this subpart and section 21A(w)(2) of the Federal Home Loan Bank Act shall then apply to such asset.); or

(b) To single real property assets which are transferred by the RTC to a new insured depository institution organized by the RTC pursuant to section 11(d)(2)(F) of the Federal Deposit Insurance Act or section 21A(b)(10)(A)(iv) of the Federal Home Loan Bank Act.

Subpart B—Disposition of Real Estate-Related Assets

§ 1640.11 Purpose and scope.

(a) This subpart establishes the methods of implementing section 21A(w)(3) of the Federal Home Loan Bank Act, which establishes requirements regarding the disposition of real property with a book value of more than $400,000 and non-performing real estate-related loans with a book value of more than $1,000,000.

(b) This subpart applies with respect to all real estate-related assets held by the RTC on or after December 17, 1993; provided, however, this subpart shall not apply with respect to any such assets which were the subject of a contract to sell or other disposition contract on December 17, 1993.

(c) Any actions of the RTC, which otherwise satisfy the standards of section 21A(w)(3) of the Federal Home Loan Bank Act and this subpart, undertaken prior to September 19, 1994 shall be used to determine compliance with section 21A(w)(3) of the Federal Home Loan Bank Act and this subpart.

§ 1640.12 Definitions.

For purposes of this subpart and section 21A(w)(3) of the Federal Home Loan Bank Act, the following definitions apply:

(a) *Bulk transaction* shall—(1) With respect to a single real property asset, have the same meaning as given the terms *portfolio sale* and *multi-asset sales initiative* in 12 CFR 1640.2(e); and

(2) With respect to a single non-performing real estate-related loan, mean a sale or other disposition in which the RTC permits the purchase, or other disposition, of two or more such loans for one indivisible price;

(b) *Controlling interest*, with respect to a real estate-related asset, shall mean an ownership interest which gives the RTC the ability to direct and control the disposition of such asset;

(c) *Employee of the RTC* shall mean an employee of the Federal Deposit Insurance Corporation or other agency assigned to the RTC under section 21A(b)(8) of the Federal Home Loan Bank Act, or an employee of a depository institution for which the RTC has been appointed conservator or receiver, or an employee of a subsidiary of such an institution;

(d) *Qualified person or entity*, with respect to a real estate-related asset, shall mean an employee or an asset management contractor of the RTC or of the Thrift Depositor Protection Oversight Board who meets the minimum qualifications established by the RTC for managing and analyzing assets of the same type as such real estate-related asset;

(e) *Real estate-related asset* shall mean a single real property asset or a single non-performing real estate-related loan;

(f) *Real property* shall mean improved or unimproved property held in fee simple or pursuant to a ground lease, a leasehold in connection with shares in a cooperative corporation or similar

entity and any other property constituting real property within the meaning of the law of the State (as defined in section 3 of the Federal Deposit Insurance Act) in which the property is situated. The term shall not mean a time share interest, a space lease or a security interest in property, including a mortgage or deed of trust;

(g) *RTC* or *Resolution Trust Corporation* shall mean the Resolution Trust Corporation, established in section 21A of the Federal Home Loan Bank Act, in its corporate capacity, its capacity as conservator, its capacity as receiver, or its capacity as the owner of a subsidiary of a depository institution under conservatorship or receivership, or in any combination thereof;

(h) *Single non-performing real estate-related loan* shall mean—

(1) A loan, in which the RTC holds an undivided or controlling interest, secured by real property, with a book value of more than $1,000,000, as determined by the RTC, which is more than 90 days delinquent; or

(2) A group of loans, in which the RTC holds an undivided or controlling interest, secured by real property, each of which has a book value of more than $1,000,000 and is more than 90 days delinquent, which may be logically treated as a single asset because the loans have at least one common characteristic, including cross default provisions, cross-collateralization and other similar characteristics;

(i) *Single real property asset* shall mean—

(1) A legally separate and distinct real property asset, with a book value of more than $400,000, as determined by the RTC, in which the RTC holds an undivided or controlling interest; or

(2) Two or more legally separate and distinct real property assets, each with a book value of more than $400,000, as determined by the RTC, in which the RTC holds an undivided or controlling interest, which may be logically treated as a single asset because the assets have at least two common characteristics, including contiguity, economic integration, shared utility systems, former common ownership, former common operation, common infrastructure improvements, common recreational facilities and other similar characteristics; and

(j) *Undivided interest*, with respect to a real estate-related asset, shall mean an interest which gives the RTC complete ownership and control of the disposition of such asset.

§ 1640.13 Procedure for disposition of real estate-related assets.

The RTC shall not sell or otherwise dispose of a real estate-related asset unless:

(a) The RTC has assigned the responsibility for the management and disposition of the asset to a qualified person or entity to:

(1) Analyze such asset on an asset-by-asset basis and consider alternative disposition strategies for such asset;

(2) Develop a written management and disposition plan; and

(3) Implement that plan for a reasonable period of time; or

(b) The RTC has made a determination in writing that a bulk transaction would maximize net recovery to the RTC, while providing broad participation by qualified bidders, including minority- and women-owned businesses.

§ 1640.14 Exceptions.

This subpart shall not apply to:

(a) Real estate-related assets that are:

(1) Sold simultaneously with a resolution in which a buyer purchases a significant proportion of the assets and either assumes a significant proportion of the liabilities or acts as agent of the RTC for purposes of paying insured deposits of an institution described in section 21A(b)(3)(A) of the Federal Home Loan Bank Act. (This exemption applies to any real estate-related asset for which the RTC has granted the buyer an option to purchase; provided, however, if at the expiration of such option the asset remains the property of the RTC, then the provisions of this subpart and section 21A(w)(3) of the Federal Home Loan Bank Act shall then apply to such asset.); or

(2) Transferred by the RTC to a new insured depository institution organized by the RTC pursuant to section 11(d)(2)(F) of the Federal Deposit Insurance Act or section 21A(b)(10)(A)(iv) of the Federal Home Loan Bank Act;

(b) Any assets which are not real estate-related assets, as defined in this subpart;

(c) Any real estate-related asset for which the RTC determines in writing that a disposition not in conformity with this subpart and section 21A(w)(3)(A) of the Federal Home Loan Bank Act will bring a greater return to the RTC.

§ 1640.15 Coordination with subpart A of this part and section 21A(w)(2) of the Federal Home Loan Bank Act.

Nothing contained in this subpart B shall supersede the requirements of subpart A of this part or section 21A(w)(2) of the Federal Home Loan Bank Act.

By order of the Deputy and Acting Chief Executive Officer.

Dated at Washington, D.C., this 14th day of September, 1994.

Resolution Trust Corporation

John M. Buckley, Jr.,

Secretary.

[FR Doc. 94–23125 Filed 9–16–94; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–CE–83–AD; Amendment 39–9024; AD 91–25–08 R1]

Airworthiness Directives; Cessna Aircraft Company Models 421C and 425 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 91–25–08, which currently requires repetitively inspecting both wing front spar upper caps for cracks on certain Cessna Aircraft Company (Cessna) Models 421C and 425 airplanes, and repairing cracks that exceed certain limits. This action provides the option of incorporating a certain wing spar upper cap service kit as either terminating action or as an extension to the repetitive inspections currently required. Wing front spar upper cap cracks at the main landing gear actuating cylinder attachment fitting on three of the affected airplanes prompted this action. The actions specified by this AD are intended to prevent wing failure caused by excessive wing spar cracking.

DATES: Effective November 4, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 4, 1994.

ADDRESSES: Service information that applies to this AD may be obtained from the Cessna Aircraft Company, Customer Services, P.O. Box 1521, Wichita, Kansas 67201. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Abbott, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946–4123; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Cessna Models 421C and 425 airplanes was published in the **Federal Register** on April 20, 1994 (59 FR 18768). The action proposed to revise AD 91–25–08 by maintaining the wing front spar upper cap repetitive inspection and possible crack repair requirement, and adding the option of incorporating the applicable Cessna service kits to either eliminate or extend the inspection time interval (depending on whether cracks are found) of the repetitive inspections. The proposed inspections would be accomplished in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of ATTACHMENT TO SERVICE BULLETIN (SB) to Cessna SB CQB91–8R1, or the ACCOMPLISHMENT INSTRUCTIONS attachment to Cessna SB MEB91–7R1, as applicable. The proposed inspection-extending or inspection-terminating modifications (optional) would be accomplished in accordance with the instructions to the applicable service kits that are included as an attachment to the above-referenced service bulletins.

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

The commenter states that, although the proposal does not apply to the serial number airplanes that the commenter owns, all 16 hi-lock pins of each aft main landing gear support (part number 5122724–1 and 5122724–2) were found loose during an annual inspection. The commenter believes that the above-referenced main landing gear supports are located in the same general area as the area referenced in the proposal, and that these areas share the same structural loads. For these reasons, the commenter proposes expanding the rule to include an inspection of these main landing gear supports as well as the wing front spar upper caps. The FAA concurs that the referenced main landing gear supports are in the same general area as the wing front spar upper caps (between the main landing gear actuating cylinder attachment and the front spar wing attach fittings); however, the two do not share the same structural loads. The main landing gear supports incur loads from the landing gear while the upper spar caps incur loads from the gear retraction cylinder. This AD is written only to detect and correct wing front spar upper cap cracking because the FAA identified this as an unsafe condition that needed AD corrective action. The FAA will evaluate service difficulty reports on the main landing gear supports, and, if found necessary, will initiate applicable rulemaking at that time. The AD is unchanged as a result of this comment.

After careful review of all available information including the comment referenced above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 551 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 3 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $90,915. This figure does not take into account the cost of repetitive inspections nor the cost of the optional inspection-extending or inspection-terminating service kit installations. The FAA has no way of determining how many repetitive inspections each operator would incur over the lifetime of the airplane.

In addition, the FAA estimates 52 workhours to install service kits on the spar caps at an average labor rate of approximately $55 an hour, and $1,050 cost per airplane for service kit parts. Based on these figures, the cost for the optional service kit installations on U.S. operators would be $2,154,410 or $3,910 per airplane. After incorporation of these kits, the repetitive inspections would be terminated or the number of repetitive inspections would be reduced depending on whether the spar was cracked.

The Cessna Aircraft Company has informed the FAA that 67 SK421–142 (–1 or –2) or SK425–44 (–1 or –2) service kits have been sold, thus reducing or terminating the inspections for the particular airplane wing front spar upper cap that the kit is installed on. Repetitive inspections are no longer required on the airplane if both wing front spar upper caps have service kits incorporated, and these kits are incorporated without cracks present. The FAA has no reasonably available means of finding out how many inspection reductions (kit incorporated with cracks) and how many inspection terminations (kit incorporated without cracks) are involved, or how many airplanes incorporated a left wing kit (–1) and a right wing kit (–2). With this in mind, the FAA does not know exactly how much this reduces the cost of the inspections and optional modification portion of this AD on U.S. operators; however, the FAA would estimate this cost reduction at around $125,000, thus reducing the optional modification portion of this AD from a fleetwide cost impact of $2,154,410 to $2,029,410. This estimate is based on taking the average workhour per wing of 26 workhours (2 wings = 52 workhours) times the average labor rate of $55 per hour plus the average cost of the different kits.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 91–25–08, Amendment 39–8109 (56 FR 60056, November 27, 1991), and by adding a new airworthiness directive to read as follows:

91–25–08 R1 Cessna Aircraft Company: Amendment 39–9024; Docket No. 91–CE–83–AD; Revises AD 91–25–08, Amendment 39–8109.

Applicability: The following model and serial number airplanes, certificated in any category:

Model	Serial Nos.
421C	421C0801 through 421C1807.
425	425–0002 through 425–0236.

Compliance: Required initially upon the accumulation of 3,000 hours time-in-service (TIS) or within the next 50 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished within the last 300 hours TIS, and thereafter as indicated in the body of this AD.

Note 1: The compliance times specified in this AD take precedence over those referenced in the applicable service information.

To prevent wing failure caused by excessive wing spar cracking, accomplish the following:

(a) Fluorescent penetrant inspect both the left and right wing front spar upper caps for cracks between the main landing gear actuating cylinder attachment and the front spar wing attach fittings in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of ATTACHMENT TO SERVICE BULLETIN (SB) to Cessna SB CQB91–8R1, or the ACCOMPLISHMENT INSTRUCTIONS attachment to Cessna SB MEB91–7R1, as applicable.

(b) If any crack is found that is parallel (inboard—outboard) to the top of the spar cap, install the applicable SK421–142 or SK425–44 service kit (–1 for left spar cap and –2 for right spar cap) in accordance with instructions to the applicable service kit (included with the service bulletins referenced in paragraph (a) of this AD) at the times that correspond with the following crack lengths, and reinspect (as applicable) as specified in paragraph (d) of this AD:

(1) If equal to or less than 2.0 inches in length, within the next 200 hours TIS;

(2) If more than 2.0 inches and less than 2.5 inches in length, within the next 50 hours TIS; or

(3) If 2.5 or more inches in length, prior to further flight.

(c) If any crack (regardless of length) is found that is not parallel (inboard - outboard) to the top of the spar cap, prior to further flight, obtain a repair scheme from the manufacturer through the Wichita Aircraft Certification Office (ACO), incorporate this repair scheme, and reinspect as specified in paragraph (d) of this AD.

(d) Reinspect (fluorescent penetrant) the left and right wing front spar upper caps for cracks in accordance with those procedures specified in paragraph (a) of this AD at intervals presented within the applicable criteria below:

(1) With cracks less than or equal to 2.0 inches in length that are parallel (inboard—outboard) to the top of the spar cap, at 50-hour TIS intervals until the applicable service kit is installed in accordance with paragraph (b) of this AD, and then reinspect thereafter at intervals not to exceed 600 hours TIS.

(2) With cracks found and the applicable SK421–142 or SK425–44 service kit (–1 for left spar cap and –2 for right spar cap) incorporated, at 600-hour TIS intervals.

(3) With no cracks found and the applicable SK421–142 or SK425–44 service kit (–1 for left spar cap and –2 for right spar cap) not incorporated, at 300-hour TIS intervals; or

(4) With no cracks found and the applicable SK421–142 or SK425–44 service kit (–1 for left spar cap and –2 for right spar cap) incorporated, no repetitive inspections required.

(e) 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.

(f) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(g) The inspections and modifications required by this AD shall be done in accordance with ATTACHMENT TO SERVICE BULLETIN to Cessna Service Bulletin CQB91–8R1, or the ACCOMPLISHMENT INSTRUCTIONS attachment to Cessna Service Bulletin MEB91–7R1, as applicable. The modification required by this AD shall be accomplished in accordance with Cessna SERVICE KIT SK421–142, dated July 3, 1993, or Cessna SERVICE KIT SK425–44, dated November 6, 1992, as applicable. 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 Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment (39–9024) revises AD 91–25–08, Amendment 39–8109.

(i) This amendment (39–9024) becomes effective on November 4, 1994.

Issued in Kansas City, Missouri, on September 12, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–23078 Filed 9–16–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 940960–4260]

RIN 0694–AB03

Transfer of the International Space Station From the USML to the CCL (ECCN 9A04A)

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which identifies those items subject to Department of Commerce export controls. This final rule amends Export Control Classification Number (ECCN) 9A04A to include the international space station and all components, parts, accessories, attachments and associated equipment specially designed, modified or configured therefor. The international space station is being built under the supervision of the U.S. National Aeronautics and Space Administration (NASA), and NASA's international partners: the space agencies of Japan, Canada and Russia, and the European Space Agency. The Department of State will publish a separate rule that removes the space station from the United States Munitions List (USML).

EFFECTIVE DATE: September 19, 1994.

FOR FURTHER INFORMATION CONTACT: Jerald Beiter, Office of Technology and Policy Analysis, Telephone: (202) 482–3351.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1990, President Bush signed Executive Order 12735 on Chemical and Biological Weapons and directed various other export control measures. The measures directed by the President included the removal from the USML (see 22 CFR part 121) of all items contained on the COCOM dual-use list (i.e, the International Industrial List), unless U.S. national security interests would be jeopardized. To implement this part of the directive, the Space

Technical Working Group (STWG), was established. The group consists of representatives from the Departments of State, Commerce, and Defense, as well as other U.S. Government agencies. The STWG recommended movement of certain non-military spacecraft, including the international space station, from the USML to the CCL. Further, on March 10, 1994, an interagency Space Station Export Controls Steering Committee recommended several steps in the area of U.S. export controls that are necessary for NASA to advance its international space station program; one of those steps involved the movement of the international space station itself from export control under the USML to control under the CCL, as well as all components, parts, accessories, attachments and associated equipment specially designed, modified or configured for the international space station.

In addition to the removal of international space station commodities from the USML, the State Department is removing from the USML certain software and technology related to the international space station, which software and technology are not captured under Category XV(f) of the USML. Such software and technology not captured under Category XV(f) of the USML are currently captured on the CCL at ECCNs 9D96G and 9E96G and will remain under those ECCNs.

Although the Export Administration Act of 1979 (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and determined that, to the extent permitted by law, the provisions of the EAA, as amended, shall be carried out under Executive Order 12924 of August 19, 1994, so as to continue in full force and effect and amend, as necessary, the export control system heretofore maintained by the Export Administration Regulations issued under the EAA.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005, 0694–0010, 0694–0013, and 0694–0073.

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

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

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

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

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 799 of the Export Administration Regulations (15 CFR Parts 730–799) is amended as follows:

1. The authority citation for 15 CFR Part 799 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; Pub. L. 264, 59 Stat. 619 (22 U.S.C. 287c), as amended; Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 et seq.), as amended; Pub. L. 102–484, 106 Stat. 2575 (22 U.S.C. 6004); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978; E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993); E.O. 12918 of May 26, 1994 (59 FR 28205, May 31, 1994); and E.O. 12924 of August 19, 1994 (59 FR 43437, August 23, 1994).

PART 799—[AMENDED]

2. In Supplement No. 1 to Section 799.1 (the Commerce Control List), Category 9 (Propulsion Systems and Transportation Equipment), ECCN 9A04A is revised to read as follows:

9A04A "Spacecraft" (not including their payloads) as follows, and specially designed components therefor:

Note 1: (For the control status of products contained in "spacecraft" payloads, see the appropriate Categories.)

Note 2: Exporters requesting a validated license from the Department of Commerce for items other than those specified in 9A04 must provide a statement from the Department of State, Office of Defense Trade Controls, verifying that the item intended for export is under the licensing jurisdiction of the Department of Commerce.

Requirements

Validated License Required: QSTVWYZ
Unit: Equipment in number; Parts and accessories in $ Value
Reason for Control: NS
GLV: $0
GCT: No
GFW: No

List of Items Controlled

a. Commercial Communication Satellites, except those with the following characteristic:

a.1. Anti-jam capability: Antennas and/or antenna systems with the ability to respond to incoming interference by adaptively reducing antenna gain in the direction of the interference;

a.2. Antennas:

a.2.a. With aperture (overall dimensions of the radiating portion(s) of the antennas) greater than 30 feet; or

a.2.b. With all sidelobes less than or equal to −35db; or

a.2.c. Designed, modified or configured to provide coverage area on the surface of the earth less than 200 nm in diameter, where "coverage area" is defined as that area on the surface of the earth that is illuminated by the main beam width of the antenna (which is the angular distance between half power points of the beam);

a.3. Designed, modified or configured for intersatellite data relay links that do not involve a ground relay terminal ("cross-links");

a.4. Spaceborne baseband processing equipment that uses any technique other than frequency translation which can be changed on a channel by channel basis among previously assigned fixed frequencies several times a day;

a.5. Employing any of the cryptographic items controlled under Category XIII(b) of the U.S. Munitions List (USML);

a.6. Employing radiation-hardened devices controlled elsewhere in § 121.1 of the ITAR (22 CFR 121.1) that are not "embedded" in the satellite in such a way as to deny physical access. (For purposes of this subparagraph "embedded" means that the device cannot feasibly either be removed from the satellite or used for other purposes.);

a.7. Having propulsion systems that permit acceleration of the satellite on-orbit (i.e. after mission orbit injection) at rates greater than 0.1 g;

a.8. Having attitude control and determination systems designed to provide spacecraft pointing determination and control better than 0.02 degrees per axis; or

a.9. Having orbit transfer engines ("kick-motors") that remain permanently with the spacecraft and are capable of being restarted after achievement of mission orbit and providing acceleration greater than 1 g. (Orbit transfer engines that are not designed, built, and shipped as an integral part of the satellite are controlled under Category IV of the USML).

b. [Reserved]

c. Other "spacecraft", not controlled under Category XV of the USML.

Note: 9A04.c includes the international space station being developed, launched and operated under the supervision of the U.S. National Aeronautics and Space Administration.

Note 1: Transferring registration or operational control to any foreign person of any satellite controlled by this entry must be authorized by an individual validated license. This requirement applies whether the satellite is physically located in the United States or abroad.

Note 2: All communication satellites identified in paragraphs a.1. through a.9. of this ECCN, and specially designed components, parts, accessories, attachments, associated equipment, and ground support equipment thereof, require a license from the Department of State, Office of Defense Trade Controls (see Category XV of the USML).

Dated: September 14, 1994.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 94–23088 Filed 9–16–94; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Counterfeit Drugs Enforcement Activities

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to enforcement activities. The amendment designates FDA officers or employees who have been issued official credential FDA–200D to administer oaths and affirmations for use in any prosecution or proceeding under or in the enforcement of any law enforced by FDA.

EFFECTIVE DATE: September 19, 1994.

FOR FURTHER INFORMATION CONTACT: John L. Paolino, Jr., Office of Criminal Investigations (HFC–300), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–294–4030, or Ellen Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: FDA is amending the regulations for delegations of authority for § 5.35 *Enforcement activities* (21 CFR 5.35) by designating FDA officers and employees who have been issued official credential FDA–200D, Special Authority for Criminal Investigators, the authority to administer oaths and affirmations for use in any prosecution or proceeding under or in the enforcement of any law enforced by FDA. This authority is the same as that delegated to holders of FDA–200A and FDA–200B credentials. This authority may not be redelegated.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101, 2125, 2127, 2128 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1, 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

2. Section 5.35 is amended by adding new paragraph (b)(3) to read as follows:

§ 5.35 Enforcement activities.

* * * * *

(b)(3) To administer oaths and affirmations under section 1 of the act of January 31, 1925 (Ch. 124, 43 Stat. 803); sections 12 to 15 of Reorganization Plan No. IV, effective June 30, 1940; and Reorganization Plan No. 1 of 1953, effective April 11, 1953.

* * * * *

Dated: September 9, 1994.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 94–23036 Filed 9–16–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

Bureau of Political-Military Affairs

22 CFR Part 121

[Public Notice 2056]

Amendments to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations implementing section 38 of the Arms Export Control Act, which governs the export of defense articles and defense services. Specifically, this rule moves from the controls of Category XV of the USML to those of entry 9A04 of the Commerce Control List (CCL) the international space station being built under the supervision of the National Aeronautics and Space Administration (NASA) and NASA's international partners: the space agencies of Japan, Canada, the European Space Agency, and Russia. This movement applies to the space station itself, as well as all components, parts, accessories, attachments and associated equipment specifically designed, modified or

configured for the space station, and all directly related technical data, software and services for those items, except for such data, software and services which are controlled under Category XV (f) of the U.S. Munitions List (USML). This rule reduces the burden on exporters by removing both the above-cited hardware and software and technical data from the controls of the International Traffic in Arms Regulations (ITAR).

The Department of Commerce is publishing separately a final rule under the provisions of the Export Administration Regulations, to amend the relevant Export Commodity Control Number (ECCN) category, i.e., 9A04, to add the international space station and all its specifically designed, modified, or configured components, parts, accessories, attachments and associated equipment, software, and technical data and services not captured under Category XV (f) of the USML, which items are being moved as a result of this rule.

EFFECTIVE DATE: This rule will take effect upon September 19, 1994.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Peoples, Office of Defense Trade Controls, Department of State, telephone number 703–875–6619, fax 703–875–6647.

SUPPLEMENTARY INFORMATION: On November 16, 1990, President Bush directed that the United States Government "remove from the USML all items contained on the COCOM dual use list unless significant U.S. national security interests would be jeopardized." (Vol. 26, No. 46, Weekly Compilation of Presidential Documents p. 1839.) To implement this directive, the Department of State established several inter-agency working groups to identify where overlaps of items on the USML and the COCOM dual use list existed and whether removal of these items from the USML would significantly jeopardize U.S. national security.

One of these inter-agency groups, the Space Technical Working Group (STWG), identified non-military spacecraft as an item involving such an overlap and recommended movement of all non-military spacecraft from the USML to the Commerce Control List (CCL), except where such movement would "significantly jeopardize U.S. national security." Among those spacecraft identified as constituting an overlap and recommended for movement to the CCL was the international space station being built by NASA and its international partners.

On September 5, 1991, the Department published in the **Federal Register** an advance notice of proposed rule-making, establishing a new Category XV on the USML for spacecraft and related systems (56 FR 43894) and advising that a series of proposed rules would follow. A final rule formally creating category XV for Spacecraft Systems and Associated Equipment was published in the **Federal Register** on April 27, 1992 (57 FR 15227).

In late 1993, President Clinton directed NASA to add the Russian Space Agency as a partner to its international space station program and instructed other U.S. Government agencies to provide the necessary assistance to NASA to enable it to continue to carry out that program. An inter-agency Space Station Export Control Steering Committee met on March 10, 1994, and recommended several steps in the area of U.S. export controls which will be necessary for NASA to advance its international space station program. One of the recommended steps is the movement of the international space station itself from export control under the USML to the control of the CCL.

The Department agrees with the recommendation of the interagency committee; accordingly, the Department is removing from the USML and the Department of Commerce is placing under the control of Export Control Classification Number (ECCN) 9A04 of the CCL the following items: the international space station and all components, parts, accessories, attachments, and associated equipment specifically designed, modified or configured for the international space station, as well as all directly related technical data, software and services for those items, except for that data, software and services which is controlled under Category XV (f) of the USML.

For purposes of clarification, this rule makes two additional minor changes, which have been requested by U.S. industry, to the language of Category XV of the USML for purposes of clarification. In paragraph (c)(2)(ii), the word "all" has been inserted to indicate that all sidelobes on the relevant satellite must be less than or equal to –35dB in order for that parameter to control the satellite under the USML. Several U.S. companies have indicated to the STWG that virtually all satellites have one or more sidelobes which are less than or equal to –35dB; the parameter is intended to capture only those few commercial communications satellites in which all sidelobes fall under the cited parameter.

In Category XV, paragraph (f), involving technical data and defense services, the first sentence has been corrected to show coverage of paragraph (f) over preceding paragraphs (a) through (e), instead of (a) through (f). In addition, the wording of the final two sentences of the paragraph has been amended to clarify the fact that those two sentences are directed only at the spacecraft which have been moved off the USML to the CCL.

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of the Administrative Procedure Act (5 U.S.C. 553 and 554).

List of Subjects in 22 CFR Part 121

Arms and Munitions, Exports.

Accordingly, for the reasons set forth in the preamble, 22 CFR subchapter M, part 121 is amended as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

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

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 C.F.R. 1977 Comp. p. 79; 22 U.S.C. 2658.

2. In § 121.1, Category XV is amended by revising paragraphs (c) introductory text, (c)(2)(ii), and (f), and adding a NOTE reading as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category XV—Spacecraft Systems and Associated Equipment

* * * * *

(c) Communications satellites (excluding ground stations and their associated equipment and technical data not enumerated elsewhere in § 121.1 of this subchapter; for controls on such ground stations, *see* the Commerce Control List) with any of the following characteristics:

* * * * *

(2) * * *

(ii) With all sidelobes less than or equal to −35dB; or

* * * * *

(f) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles in paragraphs (a) through (e) of this category. (See § 125.4 for exceptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant

Military Equipment (SME) shall itself be designated SME. In addition, detailed design, development, production or manufacturing data for all spacecraft systems and for specifically designed or modified components for all spacecraft systems, regardless of which U.S. Government agency has jurisdiction for export of the spacecraft. (See § 125.4 for exceptions.) This coverage by the U.S. Munitions List of detailed design, development, manufacturing or production information directly related to satellites which are not otherwise under the control of this section does not include that level of technical data (including marketing data) necessary and reasonable for a purchaser to have assurance that a U.S.-built item intended to operate in space has been designed, manufactured, and tested in conformance with specified contract requirements (e.g., operational performance, reliability, lifetime, product quality, or delivery expectations), as well as data necessary to evaluate in-orbit anomalies and to operate and maintain associated ground equipment.

Note: The international space station, being developed, launched and operated under the supervision of the National Aeronautics and Space Administration, is controlled for export purposes under the Export Administration Regulations.

Dated: July 30, 1994.

Lynn E. Davis,

Under Secretary of State for Arms Control and International Security Affairs.

[FR Doc. 94–20988 Filed 9–16–94; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF EDUCATION

34 CFR Part 600

Institutional Eligibility Under the Higher Education Act of 1965, as Amended

AGENCY: Department of Education.

ACTION: Final regulations, correction, compliance with information collection requirements.

SUMMARY: The Secretary amends the regulations governing Institutional Eligibility Under the Higher Education Act of 1965, as Amended to add the Office of Management and Budget (OMB) control numbers to certain sections of the regulations. Those sections contain information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved, and therefore affected parties must comply with them. The Secretary also corrects an error in the preamble to these regulations published in the **Federal Register** on April 29, 1994.

EFFECTIVE DATE: September 19, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Leibovitz, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4318, ROB–3, Washington, DC 20202. Telephone (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m., and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On April 29, 1994, final regulations were published in the **Federal Register** governing Institutional Eligibility Under the Higher Education Act of 1965, as Amended (59 FR 22324). Compliance with information collection requirements in 34 CFR 600.5, 600.7, 600.10, 600.20, 600.30, and 600.31 was delayed until those requirements were approved by OMB under the Paperwork Reduction Act of 1980. On July 25, 1994 OMB approved those information collection requirements under that Act; therefore affected parties must now comply with those requirements.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B) that proposed rulemaking is unnecessary and contrary to the public interest and that a delayed effective date is not required under 5 U.S.C. 553(d)(3).

List of Subjects in 34 CFR Part 600

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping, Student aid.

Dated: September 12, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance Number does not apply.)

The Secretary amends Part 600 of Title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for Part 600 continues to read as follows:

Authority: 20 U.S.C. 1088, 1091, 1094, 1099b, 1099c, and 1141, unless otherwise noted.

2. Sections 600.5, 600.7, 600.10, 600.20, 600.30, and 600.31 are amended by adding an OMB control number at the end of these sections to read as follows: "(Approved by the Office of Management and Budget under control number 1840–0098)"

3. The following correction is made in FR Doc. 94–10139, published in the **Federal Register** of April 29, 1994, (59 FR 22324):

On page 22324, column 1, the first sentence after the heading "EFFECTIVE DATE" is corrected to read as follows: These regulations take effect on July 1, 1994. However, affected parties do not have to comply with information collection requirements contained in §§ 600.5, 600.7, 600.10, 600.20, 600.30 and 600.31 until the information collection requirements contained in these sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

[FR Doc. 94–23097 Filed 9–16–94; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ID 6–1–6300a; FRL–5056–5]

Approval and Promulgation of Small Business Assistance Program: State of Idaho

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) approves the State Implementation Plan (SIP) revision submitted by the State of Idaho for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The implementation plan was submitted by the State to satisfy the Federal mandate, found in section 507 of the Clean Air Act (CAA), to ensure that small businesses have access to the technical assistance and regulatory information

necessary to comply with the CAA. The rationale for the approval is set forth in this document; additional information is available at the address indicated below.

DATES: This final rule will be effective on November 18, 1994 unless adverse or critical comments are received by October 19, 1994. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Air and Radiation Branch (AT–082), EPA, 1200 Sixth Avenue, Seattle, WA, 98101.Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460. Copies of the State's submittal and EPA's technical support document are available for inspection during normal business hours at the following locations: EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, and Idaho Division of Environmental Quality, 1410 North Hilton, Boise, ID, 83706.

FOR FURTHER INFORMATION CONTACT: David J. Dellarco, Air and Radiation Branch (AT–082), EPA, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–4978.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the CAA, as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the National ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that States adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the federally approved SIP. In addition, the CAA directs EPA to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of title V of the CAA. In January 1992, EPA issued *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments*, in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions.

The State of Idaho has submitted a SIP revision to EPA in order to satisfy the requirements of section 507. In order to gain full approval, the State submittal must provide for each of the following PROGRAM elements: (1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel to determine and report on the overall effectiveness of the SBAP.

II. Analysis

1. Small Business Assistance Program

Section 507(a) sets forth six requirements [1] that the State must meet to have an approvable SBAP. The first requirement is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the Act. The State has met this requirement by first conducting pilot programs to evaluate the best methods for organizing and providing technical assistance to small businesses. In addition, the State of Idaho plans to use both proactive and reactive elements to provide information to small businesses. Proactive elements include publications, news releases, public presentations, and outreach performed by the Idaho Small Business Development Center, Idaho Small Business Institute, and the States' five Regional Economic Development and Planning Agencies. Reactive elements include a hotline to respond to small business inquiries.

The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution. The State has met this requirement through its plans to integrate the States' pollution prevention and waste reduction programs' technical assistance capabilities into its small business program. In addition, Idaho will utilize the services of program staff to directly assist small businesses in the areas of accidental release detection and prevention.

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the Act in a timely and efficient manner. The State has met this requirement by providing assistance to small businesses through the use of trained staff. The availability of compliance assistance will be publicized and small business stationary sources will be encouraged to seek assistance. Program staff will identify alternative methods and technologies for compliance with each specific regulation.

The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the Act. The State has met this requirement by establishing a policy to provide as much notice of small business rights under the CAA as is reasonable and practicable. Information on small business rights will be included in information materials and other outreach activities. Program staff will ensure that both small business rights and obligations are provided to small business stationary sources in advance of applicable regulations taking effect.

The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the Act, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with the Act. The State has met this requirement by developing a program for qualified auditors to provide small business stationary sources, upon request, with an on-site determination of compliance with applicable air quality regulations.

The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of: (A) Any work practice or technological method of compliance; or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance

[1] A seventh requirement of section 507(a), establishment of an Ombudsman office, is discussed in the next section.

date, based on the technological and financial capability of any such small business stationary source. The State has met this requirement by developing standardized criteria and administrative procedures for considering requests of the nature identified above, including provisions to ensure that granting such requests will not effect the status of the federally-approved SIP and is consistent with the applicable requirements of the CAA.

2. Ombudsman

Section 507(a)(3) requires the designation of a State office to serve as the Ombudsman for small business stationary sources. The State has met this requirement by appointing an Ombudsman, which Idaho calls its Small Business Advocate.

3. Compliance Advisory Panel

Section 507(e) requires the State to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The State has met this requirement by establishing a CAP, which Idaho calls its Small Business Assistance Advisory Board.

In addition to establishing the minimum membership of the CAP the CAA delineates four responsibilities of the Panel: (1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; (2) to periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act [2]; (3) to review and assure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP. The State has met these requirements through its authorization of the Small Business Assistance Advisory Board.

[2] Section 507(e)(1)(B) requires the CAP to report on the compliance of the SBAP with these three Federal statutes. However, since State agencies are not required to comply with them, EPA believes that the State PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes.

4. Eligibility

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals;

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not a major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

The State of Idaho has established a mechanism for ascertaining the eligibility of a source to receive assistance under the PROGRAM, including an evaluation of a source's eligibility using the criteria in section 507(c)(1) of the CAA. The State of Idaho has provided for public notice and comment on grants of eligibility to sources that do not meet the provisions of sections 507(c)(1)(C), (D), and (E) of the CAA but do not emit more than 100 tpy of all regulated pollutants.

The State of Idaho has provided for exclusion from the small business stationary source definition, after consultation with the EPA and the Small Business Administration Administrator and after providing notice and opportunity for public comment, of any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of the CAA.

III. This Action

In today's action, EPA approves the SIP revision submitted by the State of Idaho. The State of Idaho has submitted a SIP revision implementing each of the PROGRAM elements required by section 507 of the CAA. At this time, the SBAP, the Ombudsman (Small Business Advocate), and the CAP (Small Business Advisory Board) are all in place and functioning. EPA is therefore approving this submittal.

IV. Administrative Review

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

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

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 18, 1994 unless, by October 19, 1994, adverse or critical comments are received.

If the EPA receives 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 this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 18, 1994.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

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

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro,

Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from Executive Order 12866 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 November 18, 1994. 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), 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Small business assistance program.

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

Dated: August 15, 1994.

Jane S. Moore,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart N—Idaho

2. Section 52.670 is amended by adding paragraph (c) (30) to read as follows:

§ 52.670 Identification of plan.

* * * * *

(c) * * *

(30) On January 7, 1994, the Administrator for the Idaho Department of Health and Welfare, Division of Environmental Quality, submitted the State PROGRAM as a revision to the Idaho SIP.

(i) Incorporation by reference.

(A) The January 3, 1994 letter from the Administrator of the Idaho Department of Health and Welfare, Division of Environmental Quality, submitting the PROGRAM to EPA.

(B) The State Implementation Plan Revision to Establish a State Small Business Stationary Source Technical and Environmental Compliance Assistance Program (which includes the text of Idaho Code 39–118E, Small Business Assistance, signed into law Senate bill 1236 by Idaho Governor, Cecil D. Andrus, on March 29, 1993), dated December 29, 1993, and adopted on January 3, 1994.

[FR Doc. 94–23105 Filed 9–16–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 52

[IN 12–3–5958a; FRL 5071–7]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is approving an April 18, 1994 State request for a site-specific revision to the Indiana sulfur dioxide State Implementation Plan (SO_2 SIP). This revision sets forth a schedule of SO_2 emission limitations applicable to Public Service Indiana's Gibson Generating Station (PSI Gibson) if the facility installs SO_2 emission controls. In the proposed rules section of this **Federal Register,** USEPA is proposing approval of and soliciting public comment on this requested SIP revision. If adverse comments are received on this direct final rule, USEPA will withdraw this final rule and address the comments received in response to this final rule in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register.**

DATES: This final rule will be effective November 18, 1994 unless an adverse comment is received by October 19, 1994. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal and other information are available for inspection during normal business hours at the following location: Air and Radiation Division, Regulation Development Section, Regulation Development Branch, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois.

A copy of the SIP revision is located at the following address: Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Mary Onischak, Regulation Development Branch, Regulation Development Section, (AR–18J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–5954.

SUPPLEMENTARY INFORMATION:

I. Introduction

At the request of PSI Gibson, Indiana has revised the facility's SO_2 emission limits, which are codified by the State at 326 Indiana Administrative Code (326 IAC) 7–4–12.1 (Gibson County Sulfur Dioxide Emission Limitations), and submitted this rule to USEPA as a site-specific SO_2 SIP revision. The revision provides the facility with two options for implementing SO_2 emission reduction measures that will ensure protection of the SO_2 National Ambient Air Quality Standards (NAAQS). The first emission reduction option in 326 IAC 7–4–12.1 was approved as 326 IAC 7–1–19 by USEPA on January 19, 1989 (54 FR 2112). This rulemaking action is based on USEPA's review of the emission limits in the second option.

II. Background

Indiana's SO_2 SIP for Gibson County, which is part of Title 326 of the Indiana Administrative Code (326 IAC), specifically 326 IAC 7–1–19, was approved by USEPA for incorporation into the SIP on January 19, 1989 (54 FR 2112). It set forth a schedule of emission limitations for PSI Gibson whereby the facility's SO_2 emissions would decrease to protect the primary SO_2 NAAQS by December 31, 1991, and then over several years would decrease further to protect the secondary SO_2 standard. The facility was to comply with these emission limits by burning low sulfur coal in Units 1–4. The rule allowed PSI Gibson to consider alternate compliance strategies and request a set of alternate emission limits, if necessary. PSI Gibson was required to submit a plan to Indiana by December 31, 1988, detailing the compliance path it intended to follow.

In 1988, PSI Gibson submitted a compliance plan to Indiana which requested an alternate emission limitation schedule. In this approach, PSI Gibson would install and operate a flue gas desulfurization system on Unit 4 to control SO_2 emissions. This alternate schedule would allow PSI Gibson to emit much less SO_2 from Unit 4 but slightly more SO_2 from Units 1–

3 than is allowed under the existing SIP approved rule. On August 7, 1990, Indiana adopted a new SO_2 rule for Gibson County to incorporate PSI Gibson's compliance plan. Since PSI Gibson needed additional time to consider the cost-effectiveness of both compliance paths, Indiana's revision to 326 IAC 7–4–12.1 included both the previously approved emission reduction schedule and the new plan's schedule, and provided that PSI Gibson must make a final choice of a compliance path by a specified date. PSI Gibson has chosen to comply with the emission limits in the second scenario.

326 IAC 7–4–12.1 was originally submitted to USEPA as a site-specific SIP revision on July 22, 1991. Upon the State's June 29, 1993 request, USEPA deferred rulemaking on the July 22, 1991 submittal. On April 18, 1994, Indiana submitted to USEPA supplemental information pertaining to the modeled attainment demonstration and reactivated the SIP revision request.

III. Emission Limitations

The emission reduction schedules for PSI Gibson Units 1–5, which are set forth in 326 IAC 7–4–12.1(b), are summarized below. All emission limits are in units of pounds SO_2 per million British Thermal Units (lb/MMBTU). The emission reduction schedule in 326 IAC 7–4–12.1(b)(1), shown in the first column below, contains the same limits and deadlines as those set forth in 326 IAC 7–1–19 and approved by USEPA on January 19, 1989 (54 FR 2112). PSI Gibson would use low sulfur coal in Units 1–4 to comply with the limits in this scenario. The second column below presents the new emission limits in the April 18, 1994 site-specific SIP submission. These limits are codified in Indiana's rules as 326 IAC 7–4–12.1(b)(2). PSI Gibson must install a flue gas desulfurization (FGD) system on Unit 4 and use low sulfur coal in Units 1–3 to comply under this scenario.

The limits in the first column have already been approved by USEPA. The emission limitation schedule in the second column does not automatically replace the existing schedule; rather, the two scenarios currently reside in Indiana's rules as a choice of compliance procedures for PSI Gibson. Note that the two emission reduction schedules are identical except for the emission limits PSI Gibson's Units 1–4 must meet by December 31, 1995.

EMISSION LIMITATIONS (LB/MMBTU) UNDER 326 IAC 7–4–12.1 (B)(1) AND (B)(2)

	(1) Low sulfur coal only	(2) FGD on unit 4
Units 1, 2, and 3:		
Beginning January 1, 1992	3.57	3.57
No later than December 31, 1993	3.13	3.13
No later than December 31, 1995	2.7	3.19
Unit 4:		
Beginning January 1, 1992	3.57	3.57
No later than December 31, 1993	3.13	3.13
No later than December 31, 1995	2.7	0.60
Unit 5:		
Beginning January 1, 1992	1.2	1.2
24-hour average (New Source Performance Standard)	1.10	1.10
No later than December 31, 1995	1.10	1.10

USEPA also notes that the rule is a SIP-strengthening measure, since the new emission limits in the April 18, 1994 submittal represent a decrease in total SO_2 emissions from what is required under the current SIP.

IV. Modeling Issues

The State is required to submit a modeled attainment demonstration to show that the emission limits set forth in 326 IAC 7–4–12.1(b)(2) will provide for attainment and maintenance of the NAAQS. The dispersion modeling information within the original July 22, 1991 submittal contained issues of some initial concern to USEPA in that the modeler for the PSI Gibson SIP revision may not have used the most current version of the Industrial Source Complex (ISC) model to demonstrate that the new Gibson County limits would protect the NAAQS. USEPA evaluated supplementary information submitted on April 18, 1994, and determined that PSI Gibson's modeling results indicated that an appropriate refined dispersion model was used. Because PSI Gibson's modeling was performed according to USEPA guidance which has since been revised, USEPA is accepting the modeled attainment demonstration for the April 18, 1994 submittal under its grandfathering policy.[1]

[1] USEPA's grandfathering guidance is described in a June 27, 1988, memorandum from the Director of the Office of Air Quality Planning and Standards to the Regional Air Division Directors.

Grandfathering is neither mandatory nor automatic, and USEPA wishes to make clear that its acceptance of the modeling analysis in the April 18, 1994 submittal will not apply to any other analysis of Gibson County to support any future regulatory action. Future SIP revision requests submitted to USEPA must demonstrate attainment of the NAAQS through modeling performed in accordance with current USEPA modeling guidance.

This SIP revision currently complies with USEPA's 1985 stack height regulations. It should be noted, however, that on January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit remanded to USEPA the exemptions for boilers originally designed to vent from common stacks. If USEPA's response on the remand modifies the applicable provision, then USEPA will notify the State of the need to reexamine the Gibson County SO_2 emission limits for consistency with the modified provision.

V. Rulemaking Action and Solicitation of Public Comment

For the reasons discussed above, USEPA is approving 326 IAC 7–4–12.1 (Gibson County Sulfur Dioxide Emission Limitations). This rule affects only the PSI Gibson facility. It sets forth two emission reduction schedules to limit the facility's SO_2 emissions. PSI Gibson has chosen to comply with the second emission schedule, which requires the use of an additional flue gas desulfurization system and will result in lower total SO_2 emissions than would the first reduction schedule. The emission limits in 326 IAC 7–4–12.1 have been shown to protect the SO_2 NAAQS.

The USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the USEPA is proposing to approve the requested SIP revision should adverse or critical comments be filed. This action will be effective on November 18, 1994 unless adverse or critical comments are received by October 19, 1994.

If the USEPA receives such comments, this action will be withdrawn before the effective date by the publication of a subsequent rule that withdraws this final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The USEPA 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, the public is advised that this action will be effective November 18, 1994.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from Executive Order 12866 review.

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

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

The 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 impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-State relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (1976).

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 November 18, 1994. 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

Air pollution control, Incorporation by reference, Sulfur oxides.

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

Authority: 42 U.S.C. 7401–7671q.

Dated: September 2, 1994.

David A. Ullrich,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(89) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(89) On July 22, 1991, as supplemented on April 18, 1994, the State submitted regulations adopted by the Indiana Air Pollution Control Board as part of Title 326 of the Indiana Administrative Code for incorporation into the Indiana sulfur dioxide State Implementation Plan.

(i) Incorporation by reference.

(A) 326 Indiana Administrative Code 7–4–12.1: Gibson County sulfur dioxide emission limitations; effective December 5, 1990. Published in the *Indiana Register*, Volume 14, Number 3, December 1, 1990.

[FR Doc. 94–23107 Filed 9–16–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[MN15–2–6363; FRL–5072–6]

Approval of the 1990 Base Year Carbon Monoxide Emission Inventory for Minnesota

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA is approving the 1990 base year carbon monoxide (CO) emission inventory submitted by the State of Minnesota as meeting the Clean Air Act requirements for emission inventories for CO. The inventory was submitted by the State to satisfy certain Federal requirements for an approvable nonattainment area CO State Implementation Plan (SIP) for the Duluth and Minneapolis-St. Paul areas in Minnesota.

USEPA's action is based upon a base year emission inventory which was submitted by the State of Minnesota to satisfy the requirements of section 187(a)(1) of the Clean Air Act.

EFFECTIVE DATE: This final rulemaking becomes effective on October 19, 1994.

ADDRESSES: Copies of the base year emission inventory and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone Maggie J. Greene before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AE–17J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Maggie J. Greene, Air Enforcement Branch, Regulation Development Section (AE–17J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6088.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On November 9, 1992 and November 10, 1992, the Minnesota Pollution Control Agency submitted to USEPA 1990 base year CO emission inventories for the Duluth and Minneapolis-St. Paul areas in Minnesota. The inventories were were submitted to USEPA as a revision to the State of Minnesota SIP. The State held public hearings on October 26, 1992, and November 6, 1992, to entertain public comments on the 1990 base year emission inventory for Duluth. The public hearing for the Minneapolis-St. Paul metropolitan area was held on June 22, 1994. The USEPA issued a completeness letter to the State on March 8, 1993. The notice of proposed rulemaking was published in the February 25, 1994 (59 FR 9155) **Federal Register.**

II. Public Comment/USEPA Response

A thirty-day public comment period was provided to allow interested parties the opportunity to comment on USEPA's proposed action. There were no public comments received on this action by the Agency. Additionally, USEPA redesignated the Duluth area to attainment on April 14, 1994 (59 FR 17706) in a separate rulemaking action.

III. Rulemaking Action

USEPA is approving the base year emission inventory that was submitted by the State of Minnesota. The State submitted a complete inventory containing point, area, and mobile off-road and on-road source data, and documentation. The inventory is complete and approvable for the Duluth and Minneapolis-St. Paul areas according to all criteria set out in the June 24, 1993, memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to the Regional Air Directors. Although Minnesota had not provided opportunity for public comment on the Minneapolis-St. Paul area inventory at the time of USEPA's proposed rulemaking, Minnesota provided such public comment period for 30 days ending June 17, 1994, and held a public hearing on June 22, 1994. With this action, the Minneapolis-St. Paul area inventory is now also complete and approvable. As a result, USEPA is approving the SIP carbon monoxide emission inventory submitted by the State of Minnesota.

The emissions inventories of carbon monoxide emissions for a typical winter day in Duluth and in the Minneapolis-St. Paul areas are indicated in tables 1 and 2 below.

TABLE 1.—CARBON MONOXIDE EMISSIONS FOR THE DULUTH AREA

Emissions source	1990 emissions rate (lbs/winter day)
On-road Mobile	114,718
Off-road Mobile	13,624
Point Source	4,270
Area Source	85,614
Total Emissions	218,226

TABLE 2.—CARBON MONOXIDE EMISSIONS FOR THE MINNEAPOLIS-ST. PAUL AREA

Emissions source	1990 emissions rate (lbs/winter day)
On-road Mobile	2,790,595
Off-road Mobile	345,702
Point Source	559,898
Area Source	566,285
Total Emissions	4,262,480

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

USEPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator reclassified this action from Table 2 to a Table 3 action under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for 2 years. The USEPA submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB agreed to continue the temporary waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993. OMB has exempted this regulatory action from Executive Order 12866 review.

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

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

Under Section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 18, 1994. 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 changed 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, Carbon monoxide, Intergovernmental relations, Reporting and record keeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 31, 1994.

Valdas V. Adamkus,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart Y—Minnesota

2. Section 52.1237 is added to read as follows:

§ 52.1237 Control strategy: Carbon monoxide.

(a) The base year carbon monoxide emission inventory requirement of section 187(a)(1) of the Clean Air Act, as amended in 1990, has been satisfied for the following areas: Duluth Metropolitan Area and Minneapolis-St. Paul Metropolitan Area.

[FR Doc. 94–23037 Filed 9–16–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[CO29–1–6611, CO29–1–6619, & CO36–5–6598; FRL–5068–4]

Clean Air Act Approval and Promulgation of PM_{10} Implementation Plan for Colorado; Designation of Areas for Air Quality Planning Purposes; Telluride

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA partially approves the State implementation plan (SIP) submitted by the State of Colorado to achieve attainment of the National Ambient Air Quality Standards

(NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}), including: control measures, technical analyses, and other Clean Air Act SIP requirements, with the exception of the quantitative milestones element. The SIP was submitted by the Governor of Colorado in a letter dated March 17, 1993 to satisfy certain federal requirements for an approvable SIP for the Telluride, Colorado moderate PM_{10} nonattainment area. EPA conditionally approves the quantitative milestone element because the SIP does not demonstrate maintenance of the PM_{10} NAAQS through 1997. However, the State has committed to adopt control measures necessary to provide for maintenance.

In addition, EPA approves the SIP revision submitted by the Governor with a letter dated December 9, 1993 to address contingency measure requirements for the Telluride moderate PM_{10} nonattainment area.

Finally, EPA amends the boundary for the Telluride nonattainment area to clarify the original description.

EFFECTIVE DATE: This rule will become effective on October 19, 1994.

ADDRESSES: Copies of the State's submittals and other information are available for inspection during normal business hours at the following locations:

Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405

Colorado Department of Health, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530

The Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Environmental Protection Agency, Region VIII, (303) 293–1769.

SUPPLEMENTARY INFORMATION:

I. Background

The Telluride, Colorado area was designated nonattainment for PM_{10} and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (Nov. 6, 1991), 40 CFR 81.306 (Telluride). The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in subparts 1 and 4 of part D, title I of the Act.[2]

The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM_{10} nonattainment area SIP requirements (see generally 57 FR 13498, April 16, 1992 and 57 FR 18070, April 28, 1992). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in this proposal and the supporting rationale.

Those States containing initial moderate PM_{10} nonattainment areas (those areas designated under section 107(d)(4)(B) of the Act) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) [including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)] shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modelling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every three years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions were due at a later date. States with initial moderate PM_{10} nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM_{10} by June 30, 1992 (see section 189(a)). The State has submitted such a permit program, and EPA will address that submittal in a separate action. Such States also were required to submit contingency measures by November 15, 1993 which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve reasonable further progress or to attain the PM_{10} NAAQS by the applicable statutory deadline (see section 172(c)(9) and 57 FR 13543–13544). The State of Colorado has submitted contingency measures for Telluride and EPA is addressing those measures in this action.

On June 23, 1994, EPA announced its proposed action on the Telluride, Colorado moderate nonattainment area PM_{10} SIP and contingency measures (59 FR 32397–32405). In that proposed rulemaking and related Technical Support Document (TSD), EPA described its interpretations of title I and its rationale for the proposed rulemaking taking into consideration the specific factual issues presented.

EPA requested public comments on all aspects of the proposal (please reference 59 FR 32404). No comments were received. This final action on the Telluride moderate nonattainment area PM_{10} SIP is unchanged from the June 23, 1994 proposed action.

The discussion herein provides only a broad overview of the proposed action EPA is now finalizing. The public is referred to the June 23, 1994 proposed rule for a more in depth discussion of the action now being finalized.

II. This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). The Governor of Colorado submitted the Telluride PM_{10} SIP in a letter dated March 17, 1993, and the Telluride PM_{10} contingency measures in a letter dated December 9, 1993. As described in EPA's proposed action on this SIP (59 FR 32397–32405), the Telluride moderate nonattainment area plan includes, among other things, technical analyses, control measures to satisfy the RACM requirement, a demonstration (including air quality modelling) that attainment of the PM_{10} NAAQS will be achieved by December 31, 1994, and enforceability documentation. Further, EPA proposed to determine that major sources of precursors of PM_{10} do not

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Public Law No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and Subpart 4 contains provisions specifically applicable to PM_{10} nonattainment areas. At times, Subpart 1 and Subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's notice and supporting information.

contribute significantly to PM_{10} levels in excess of the NAAQS in Telluride.[3]

In this final rulemaking, EPA announces its partial approval of those elements (excluding the quantitative milestone element) of the Telluride PM_{10} SIP, which were due on November 15, 1991 and submitted on March 17, 1993. Further, section 110(k)(4) of the Act authorizes EPA to approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than one year after the date of approval of the plan revision. Hence, EPA announces its conditional approval of the quantitative milestones element of the Telluride PM_{10} SIP based on the State's commitment, dated April 21, 1994, to adopt control measures for Telluride by November 30, 1994 that are necessary to demonstrate maintenance of the PM_{10} NAAQS. Section 110(k)(4) provides that any such conditional approval shall be treated as a disapproval if the state fails to comply with such commitment.[4]

The quantitative milestone element of the Telluride SIP is deficient in that it does not demonstrate that the second quantitative milestone—continued maintenance from 1994 through 1997—will be achieved. EPA conditionally approves this element of the SIP in light of the State's commitment to adopt additional control measures necessary to provide for continued maintenance.

The State has indicated that it intends to address the maintenance issue by proposing for adoption additional control measures to maintain the PM_{10} NAAQS through 1997. In an April 21, 1994 letter from Thomas Getz, Colorado Air Pollution Control Division (APCD), to Douglas M. Skie, EPA, the State made the following commitments: (1) maintenance control measures and any related SIP revision will be proposed to the Colorado Air Quality Control Commission (AQCC) by July 21, 1994; (2) a public hearing on such regulations and SIP revision will be held by October 20, 1994; and (3) the adopted regulations and SIP revision will be submitted to EPA by November 30, 1994. The effective date of such measures must be November 1, 1995, but could be as early as December 1, 1994.

Upon adoption and submittal to EPA, these additional control measures for maintenance will be evaluated for their adequacy in allowing the area to demonstrate maintenance through 1997.

On August 16, 1994, EPA only partially approved the State's nonattainment new source review (NSR) permitting regulations for the Telluride moderate PM_{10} nonattainment area (among others) because the State did not submit NSR permitting regulations for sources of PM_{10} precursors in Telluride and because EPA had not yet found that such sources did not contribute significantly in Telluride (see 59 FR 33213). In this final rulemaking, EPA is now finalizing its finding that major stationary sources of precursors of PM_{10} do not contribute significantly to PM_{10} levels in excess of the NAAQS in Telluride. The consequence of this finding is to exclude major stationary sources of PM_{10} precursors in Telluride from the applicability of PM_{10} nonattainment area control requirements, including nonattainment NSR permitting requirements. Thus, the State's nonattainment NSR regulations for Telluride area now considered fully approved.

In this final rulemaking action EPA also announces its full approval of the PM_{10} contingency measures that were due on November 15, 1993 and submitted by the State on December 9, 1993. In addition, EPA amends the nonattainment area boundary description for Telluride in order to clarify the original description.

Please refer to EPA's proposed rulemaking (59 FR 32397) and the TSD for that action for a detailed discussion of these elements of the Telluride plan.

EPA finds that the State of Colorado's PM_{10} SIP for the Telluride moderate nonattainment area meets the Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), requirement. Colorado's SIP revision for Telluride contains control measures for sources of wood and coal burning. The State has demonstrated that by applying control measures to this area source, Telluride will be in attainment by December 31, 1994, and it does not appear that apply further control measures to these sources would expedite attainment.

Therefore, EPA views the following measure as reasonable, enforceable, and responsible for significant PM_{10} emissions reductions in Telluride: Colorado regulation entitled "State Implementation Plan—Specific Regulations for Local Elements, II. Telluride Nonattainment Area," which requires continued implementation of local programs to control solid fuel burning devices, eliminate coal burning, and prohibit installation of additional solid fuel burning devices. The RACM (including RACT) provisions in the SIP are described further in the TSD associated with EPA's June 23, 1994 proposed rulemaking on this SIP.

A more detailed discussion of the individual source contributions, their associated control measures (including available control technology) and an explanation of why certain available control measures were not implemented, can be found in the TSD accompanying EPA's proposed rulemaking for the Telluride moderate PM_{10} nonattainment area SIP (59 FR 32397). EPA has reviewed the state's documentation and concluded that it adequate justifies the control measure to be implemented. The implementation of Colorado's PM_{10} nonattainment plan for Telluride will result in attainment of the PM_{10} NAAQS by December 31, 1994. EPA is approving the Telluride PM_{10} plan's control strategy as satisfying the RACM (including RACT) requirement.

EPA also finds that the State of Colorado's December 9, 1993 submittal of PM_{10} contingency measures for the Telluride moderate PM_{10} nonattainment area meets the requirements of section 172(c)(9) of the Act. Specifically, section II.B. of the State regulation entitled "State Implementation Plan-Specific Regulations for Local Elements" provides that, upon the determination that the area has failed to attain the PM_{10} NAAQS or make reasonable further progress (RFP), the following will be implemented: (1) 0.30 miles of dirt roads within the Town of Telluride will be chip-seal paved, and (2) either 2.0 miles of unpaved San Miguel County gravel roads at the Ski Ranches Subdivision or 0.75 miles of private dirt roads at the Hillside/Gold King Subdivision (each within the Telluride nonattainment area) will be chip-seal paved. EPA has reviewed the State's documentation and regulation and concluded that they adequately meet the requirements of section 172(c)(9) of the Act. By this action, EPA is approving the PM_{10} contingency measures for the Telluride moderate PM_{10} nonattainment area.

Finally, EPA announces a clarification to the Telluride moderate PM_{10}

[3] The consequences of this finding are to exclude these sources from the applicability of PM_{10} nonattainment area control requirements. Note that EPA's finding is based on the current character of the area including for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area.

[4] If the State fails to comply with its commitment, this conditional approval of the quantitative milestones element will become a disapproval upon EPA notification of the State by letter. EPA subsequently will publish a notice in the "Notices Section" of the **Federal Register** announcing such action and explaining its implications. If this conditional approval is converted to a disapproval, the sanctions clock under section 179(a) of the Act will begin. This clock will begin at the time EPA issues a final disapproval or at the time EPA notifies the State by letter that a conditional approval has been converted to a disapproval.

nonattainment area boundary, which is based on a legal description of the map outline of the area, as follows.

The Telluride nonattainment area begins at the intersection of Colorado State Highway 145 and the Telluride service area boundary, as it existed in 1991. The western edge of the nonattainment area until it meets Remine Creek is defined as follows:

A tract of land located in a portion of the west one-half of Section 28 and the east one-half of Section 29, Township 43 North, Range 9 west, of the New Mexico Principal Meridian, County of San Miguel, State of Colorado, described as follows:

Beginning at the southwest corner of the said Section 28;
Thence N 89°36'00" W. 292.70 Feet;
Thence S 04°05'12" W. 538.63 Feet;
Thence N 03°29'42" W. 780.19 Feet;
Thence N 22°15'00" E. 3,344.16 Feet;
Thence S 51°51'49" E. 570.44 Feet;
Thence S 03°15'36" E. 1,106.22 Feet;
Thence S 45°24'42" E. 546.96 Feet;
Thence S 28°41'12" W. 549.62 Feet;
Thence S 29°40'09" E. 169.68 Feet;
Thence S 44°30'03" W. 649.51 Feet;
Thence S 85°54'00" E. 660.00 Feet;
Thence S 04°06'00" W. 660.00 Feet;
Thence N 89°56'00" E. 1,318.68 Feet; to the true point of beginning containing 11,249 acres as described above.

Then, at Remine Creek, the nonattainment boundary follows the service area boundary for 9.65 miles to the eastern edge of the area, continuing to follow the 9,200 foot contour line. The boundary then intersects Bear Creek. Here the nonattainment boundary diverges from the service area boundary (9,200 foot contour line). The nonattainment boundary continues in a west, southwest direction for 0.92 miles from the intersection of the 9,200 foot contour line and Bear Creek to the top of ski lift number 9 in the Telluride Ski Area at an elevation of about 11,900 feet. The boundary then shifts and runs in a north-westerly direction for 0.83 miles from the top of lift 9 to the top of lift 7, which is located at an elevation of 10,490 feet. From the top of lift 7, the nonattainment boundary continues in a north-westerly direction for 0.5 miles to the intersection of lift 3 with the 10,000 foot control line. The nonattainment boundary follows the 10,000 foot contour line in a south, south-west direction for 3.2 miles, until it intersects Skunk Creek. Here the boundary diverges from the 10,000 foot contour line and follows Skunk Creek in a northerly direction for 2.25 miles. At the intersection of Skunk Creek and Colorado State Highway 145, the nonattainment boundary leaves the creek and follows Highway 145 in a northerly direction until it meets the service area boundary as it existed prior to changes adopted in 1991.

EPA is replacing the boundary description currently in 40 CFR 81.306 with this revised description to more clearly define the nonattainment area. Note that this description is merely a more detailed explanation of the boundary and not a change in the boundary itself.

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

III. Final Action

This document announces EPA's final action on the rulemaking proposed at 59 FR 32397 on June 23, 1994. As noted elsewhere in this action, EPA received no comments on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 2 to Table 3 under the processing procedures established at 54 FR 2214, January 19, 1989.

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

Approvals and conditional approvals of SIP submittals under sections 110 and 301, 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 impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Clean Air Act, preparation of a regulatory 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. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(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 November 18, 1994. 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 must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

The Office of Management and Budget (OMB) has exempted these actions from review under Executive Order 12866.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and record keeping requirements, Sulfur dioxide, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: August 31, 1994.

Jack W. McGraw,

Acting, Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.320 is amended by adding paragraph (c)(68) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(68) The Governor of Colorado submitted a portion of the requirements for the moderate nonattainment area PM_{10} State Implementation Plan (SIP) for Telluride, Colorado with a letter dated March 17, 1993. The submittal was made to satisfy those moderate PM_{10} nonattainment area SIP requirements due for Telluride on November 15, 1991; however, the submittal did not contain quantitative milestones to provide for maintenance of the PM_{10} National Ambient Air Quality Standards through December 1997. The Governor of Colorado submitted moderate PM_{10} nonattainment area contingency

measures for Telluride with a letter dated December 9, 1993. This submittal was intended to satisfy the requirements of section 172(c)(9) of the Clean Air Act due on November 15, 1993.

(i) Incorporation by reference.

(A) Colorado Air Quality Control Commission Nonattainment Areas regulation, Section II., Telluride Nonattainment Area, adopted January 21, 1993 and effective on March 2, 1993, with revisions adopted November 12, 1993 and effective December 30, 1993.

(ii) Additional material.

(A) The commitment and schedule for the adoption and implementation of PM_{10} control measures that are necessary to demonstrate maintenance of the 24-hour PM_{10} standard in Telluride, which were submitted in an April 21, 1994 letter from Thomas Getz, Air Pollution Control Division, to Douglas M. Skie, EPA.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.306 the table for Colorado-PM_{10} Nonattainment Areas is amended under San Miguel County by revising the entry for "Telluride" to read as follows:

§ 81.306 Colorado

* * * * *

COLORADO.—PM–10 NONATTAINMENT AREAS

Designated Area	Designation		Classification	
	Date	Type	Date	Type
San Miguel County				
Telluride	11/15/90	Nonattainment	11/15/90	Moderate
The Telluride nonattainment area begins at the intersection of Colorado State Highway 145 and the Telluride service area boundary, as it existed in 1991. The western edge of the nonattainment area until it meets Remine Creek is defined as follows: A tract of land located in a portion of the west one-half of Section 28 and the east one-half of Section 29, Township 43 North, Range 9 west, of the New Mexico Principal Meridian, County of San Miguel, State of Colorado, described as follows: Beginning at the southwest corner of the said Section 28; Thence N 89°36′00″ W. 292.70 Feet; Thence S 04°05′12″ W. 538.63 Feet; Thence N 03°29′42″ W. 780.19 Feet; Thence N 22°15′00″E. 3344.16 Feet; Thence S 51°51′49″ E. 570.44 Feet; Thence S 03°15′36″ E. 1106.22 Feet; Thence S 45°24′42″ E. 546.96 Feet; Thence S 28°41′12″ W. 549.62 Feet; Thence S 29°40′09″ E. 169.68 Feet; Thence S 44°30′03″ W. 649.51 Feet; Thence S 85°54′00″ E. 660.00 Feet; Thence S 04°06′00″ W. 660.00 Feet; Thence N 89°56′00″ E. 1318.68 Feet; to the true point of beginning containing 11249 acres as described above.				

COLORADO.—PM–10 NONATTAINMENT AREAS—Continued

Designated Area	Designation		Classification	
	Date	Type	Date	Type
Then, at Remine Creek, the nonattainment boundary follows the service area boundary for 9.65 miles to the 9,200 foot contour line. The boundary then intersects Bear Creek. Here the nonattainment boundary diverges from the service area boundary (9,200 foot contour line). The nonatttainment boundary continues in a west, southwest direction for 0.92 miles from the intersection of the 9,200 foot contour line and Bear Creek to the top of ski lift number 9 in the Telluride Ski Area at an elevation of about 11,900 feet. The boundary then shifts and runs in a north-westerly direction for 0.83 miles from the top of lift 9 to the top of lift 7, which is located at an elevation of 10,490 feet. From the top of lift 7, the nonattainment boundary continues in a north-westerly direction for 0.5 miles to the intersection of lift 3 with the 10,000 foot control line. The nonattainment boundary follows the 10,000 foot contour line in a south, south-west direction for 3.2 miles, until it intersects Skunk Creek. Here the boundary diverges from the 10,000 foot contour line and follows Skunk Creek in a northerly direction for 2.25 miles. At the intersection of Skunk Creek and Colorado State Highway 145, the nonattainment boundary leaves the creek and follows Highway 145 in a northerly direction until it meets the service area boundary as it existed prior to changes adopted in 1991				

* * * * *

[FR Doc. 94–22527 Filed 9–16–94; 8:45 am]
BILLING CODE 6560–P–M

40 CFR Part 261

[SW–FRL–5075–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Amendment

AGENCY: Environmental Protection Agency.

ACTION: Final amendment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final amendment to an exclusion from the lists of hazardous wastes previously granted for certain solid wastes generated by POP Fasteners (POP) in Shelton, Connecticut. This action is taken in response to a petition for amendment submitted by POP to increase the maximum annual waste volume covered in its exclusion. The exclusion was granted under regulations that allow generators to petition EPA to remove their wastes from hazardous waste control by excluding such wastes from the hazardous waste lists.

EFFECTIVE DATE: September 19, 1994.

ADDRESSES: The public docket for this final amendment is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing (room M2616) from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260–9327 for appointments. The reference number for this docket is "F–94–DLPE–FFFFF". 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 the RCRA Hotline, toll free at (800) 424–9346, or at (703) 412–9810. For technical information concerning this notice, contact Shen-yi Yang, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–1436.

SUPPLEMENTARY INFORMATION:

I. Background

On March 5, 1990, POP Fasteners (POP), a division of Black and Decker Corporation, of Shelton, Connecticut petitioned the Agency under §§ 260.20 and 260.22, to exclude from hazardous waste control its F006 metal hydroxide filter cake resulting from the treatment of wastewater originating from its electroplating operation. After evaluating the petition, EPA published its final decision in the **Federal Register** (57 FR 57673, December 7, 1992) to exclude POP's waste from the lists of hazardous waste contained at §§ 261.31 and 261.32. POP's final exclusion only applied to the process and waste volume (a maximum of 300 cubic yards generated annually) covered by its original petition. Any waste generated in excess of 300 cubic yards per year must be handled as hazardous unless an amendment to POP's final exclusion is granted.

On May 10, 1993, POP petitioned the Agency for an amendment to its 1992 final exclusion for an increase of its annual maximum waste generation from 300 cubic yards to 1,000 cubic yards. After its evaluation of POP's request and supporting information, EPA proposed, on April 11, 1994, to amend POP's December 7, 1992 exclusion to reflect a waste volume increase (see 59 FR 17080).

Today's rulemaking finalizes the proposed amendment to amend POP's existing exclusion.

II. Disposition of Petition for Amendment

POP Fasteners, Shelton, Connecticut.

A. Proposed Amendment

As a result of its business growth, POP petitioned the Agency on May 10, 1993 for an amendment to its 1992 final exclusion for an increase of its annual maximum waste generation from 300 cubic yards to 1,000 cubic yards.

POP stated in an April 19, 1993 letter that: (1) the increase in the filter cake generation was attributable to an increase in rivet production since the petition was filed; (2) there have been no changes in the manufacturing process, feed materials, or waste water treatment process; and (3) the hours of POP's operation have increased.

To confirm that the waste characteristics have not changed, POP submitted results from the analyses of one filter cake composite for all Toxicity Characteristic (TC) constituents listed in 40 CFR 261.24 and nickel using the Toxicity Characteristic Leaching Procedure (TCLP, SW–846 Method 1311). POP also submitted a signed certification dated May 10, 1993 stating that all submitted information is true, accurate, and complete.

The Agency reviewed its previous decision to grant POP's original delisting petition (57 FR 37921, 57 FR 57673 and the administrative record in the RCRA public docket) and the analytical results provided by POP in support of its request for an amendment to its existing exclusion. The analytical results submitted to support this amendment show that the constituents detected in the waste sample, as well as their respective leachate concentration levels, are consistent with the waste data in POP's original petition. Furthermore, POP has certified that there have been no changes in process or feed materials. Therefore, the Agency believes that the waste characteristics have not changed.

The Agency evaluated the potential impact of POP's petitioned waste on human health and the environment, at the increased annual maximum waste volume, following the same approach it used in evaluating POP's original petition. Specifically, the Agency evaluated the waste using the requested annual maximum waste volume estimate of 1,000 cubic yards and the maximum reported leachate concentration of POP's waste using the same ground-water model described in the Agency's original decision (see 57 FR 37921, August 21, 1992 and the RCRA public docket "F–92–PEEP–FFFFF" to that rule). The Agency notes that the modeling results are the same for 300 and 1,000 cubic yards, and the increased waste volume has no significant impact. Thus, the Agency believes that the constituents in POP's waste would not leach and migrate at concentrations above the Agency's health-based levels used in delisting decision-making.

EPA also considered the impact of the increased waste volume on potential risks posed by other exposure routes (i.e., air emission, surface water). Since the total concentration levels of hazardous constituents of concern in the petitioned waste and the active landfill area remain unchanged, the Agency believes that no significant exposure to contaminants potentially released via air emission and surface runoff from POP's petitioned waste is likely. See 57 FR 37921 (August 21, 1992), 57 FR 57673 (December 7, 1992), and the RCRA public dockets for these notices for a detailed description of the evaluation.

B. Response to Public Comments

The Agency did not receive any comments on the proposed amendment.

C. Final Agency Decision

For the reasons stated in the proposed amendment and in today's notice, the Agency believes that POP's waste is non-hazardous at the maximum generation rate of 1,000 cubic yards per year, and should be excluded from hazardous waste control. The Agency, therefore, is granting the amendment to POP Fastener's exclusion to reflect a

waste volume increase for waste generated at its Shelton, Connecticut facility. This amendment only applies to the process covered by POP's original petition, and allows a maximum annual waste volume of 1,000 cubic yards. All other conditions listed in POP's exclusion remain unchanged. Waste generated in excess of 1,000 cubic yards per year or from changed processes must be handled as hazardous until a new exclusion is granted.

III. Effective Date

This amendment is effective immediately upon final publication in the **Federal Register**. 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 amendment reduces the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this amendment should be effective immediately upon final publication. These reasons also provide a basis for making this amendment effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. This amendment is not significant, since its effect reduces the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding an additional amount of waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional economic impact due to today's rule. Therefore, this rule is not 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.

V. Regulatory Flexibility Act

Pursuant to 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 that describes the impact of the rule on small entities (*i.e.*, 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 an impact on any small entities.

This amendment will not have any adverse economic impact on small entities because its effect will be to reduce the overall costs of EPA's hazardous waste regulations and will be limited to one facility. Accordingly, I hereby certify that this amendment will not have a significant economic impact on a substantial number of small entities. This amendment therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final amendment have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous Waste, Recycling, Reporting and recordkeeping requirements.

Dated: September 7, 1994.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is 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, and 6938.

Appendix IX—[Amended]

2. In Table 1 of Appendix IX of Part 261, the entry for "POP Fasteners, Shelton, Connecticut" is revised to read as follows:

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * * *
POP Fasteners	Shelton, Connecticut.	Wastewater treatment sludge (EPA Hazardous Waste No. F006) generated from electroplating operations (at a maximum annual rate of 1,000 cubic yards) after [insert date of publication]. In order to confirm that the characteristics of the waste do not change significantly, the facility must, on an annual basis, analyze a representative composite sample for the constituents listed in §261.24 using the method specified therein. The annual analytical results, including quality control information, must be compiled, certified according to §260.22(i)(12), maintained on site for a minimum of five years, and made available for inspection upon request by any employee or representative of EPA or the State of Connecticut. Failure to maintain the required records on site will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA.
*	*	* * * * * *

[FR Doc. 94–23114 Filed 9–16–94; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3720, 3730, 3800, 3810, 3820, 3830, and 3850

[WO–660–4191–02–24 1A; Circular No. 2657]

RIN 1004–AC17

Mining Claims; Maintenance and Location Fees; Lands Open to Location, National Parks, King Range National Conservation Area, Indian Reservations, Surface Management; Removal of Obsolete or Expired Regulations, Consolidation of Remaining Sections; Final Rule; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule implementing provisions of the Omnibus Budget Reconciliation Act of 1993 that require a $25 location fee and a $100 annual maintenance fee for each mining claim and site located and held under the general mining laws. The rule was published Tuesday, August 30, 1994 (59 FR 44846).

EFFECTIVE DATE: August 30, 1994.

FOR FURTHER INFORMATION CONTACT: Frank Bruno (202) 452–0350 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Need For Correction

As published, the final rule contains an error which may prove to be misleading and, therefore, needs clarification.

Correction of Publication

Accordingly, the publication on August 30, 1994, of the final rule (WO–660–4191–02–24 1A; Circular No. 2657), which was the subject of FR Doc. 94–21388, is corrected as follows:

On page 44862, in the first column, in § 3833.1–7, paragraph (e)(1), line 12, the cross-referenced paragraph "3833.0–5(y)" is corrected to read "3833.0–5(x)".

Nancy K. Hayes,

Acting Assistant Secretary of the Interior.

[FR Doc. 94–23133 Filed 9–16–94; 8:45 am]
BILLING CODE 4310–84–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 940951–4251; I.D. 081694B]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Framework Adjustment 6 to the Northeast Multispecies Fishery Management Plan (FMP). The intent of this rule is to reduce the catch of juvenile silver hake in the Cultivator Shoal whiting (silver hake) fishery by increasing the minimum mesh size from 2½ inches (6.35 cm) to 3 inches (7.62 cm).

EFFECTIVE DATE: October 19, 1994.

ADDRESSES: Copies of Amendment 5 to the FMP, its regulatory impact review (RIR) and the initial regulatory flexibility analysis contained within the RIR, its final supplemental environmental impact statement, and Framework Adjustment 6 are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, NMFS, Fishery Policy Analyst, 508–281–9252.

SUPPLEMENTARY INFORMATION:

Background

Amendment 4 to the FMP, published May 31, 1991 (56 FR 24724), established the Cultivator Shoal whiting fishery, a specified area within the Gulf of Maine/Georges Bank Regulated Mesh Area. For 3 years preceding Amendment 4, NMFS had conducted an experimental fishery program in the Cultivator Shoal area using NMFS sea samplers to collect data about the silver hake fishery and particularly about the regulated species bycatch. The data collected by sea samplers led to the conclusion that the Cultivator Shoal whiting fishery had minimal impact on regulated species.

Under the terms of Amendment 5 to the FMP (59 FR 9872, March 1, 1994), vessels may fish for silver hake in the Cultivator Shoal area from June 15 through October 31, unless otherwise specified, if the vessel: (1) Has onboard a letter of authorization issued by the Director, Northeast Region, NMFS (Regional Director); (2) has a minimum mesh size of 2½ inches (6.35 cm) applied to the first 160 meshes counted from the terminus of the net; and (3) does not exceed the possession limit of regulated species as specified in 50 CFR 651.27(a).

Fishing industry members recently asked the New England Fishery Management Council (Council) to adopt more restrictive regulations to conserve the silver hake stocks and protect this resource from a potential increase in fishing effort directed at the juvenile component of the stocks. Their concerns are based on at least two recent developments in the industry that directly affect the silver hake fisheries, as well as on the assessment scientists' uncertainty about the stock status and the impact of those recent changes.

First, as restrictive management plans are implemented in other fisheries in the region, a significant amount of potential fishing effort is being displaced. Fishers anticipate that some portion of that displaced fishing effort will be directed on silver hake, since this fishery is relatively unregulated and the stocks are comparatively stable. The effect of a sudden increase in fishing effort on silver hake stocks and markets is uncertain, but potentially detrimental to both. The most recent advisory report from the Stock Assessment Workshop (SAW) in February 1994, which was SAW #17, states that, although there are uncertainties regarding the exploitation pattern in the silver hake fishery, it is recommended that any increase in effort on these stocks be avoided.

Second, in the past year, an export market for juvenile silver hake has emerged. The potential demand from this new market and its impact on the stocks are unknown. Assessment scientists, while acknowledging that natural mortality rates of juvenile silver hake are high and that discards of juveniles in the traditional silver hake fisheries are excessive, caution against any increase in fishing effort directed at the juvenile sector. If juvenile mortality increases, the spawning stock biomass will decline and the catch of large silver hake in traditional fisheries will also decline.

Generally, increasing the mesh size will delay the age at which fish become susceptible to the gear, thereby reducing juvenile mortality. Increasing the mesh size from 2½ inches (6.35 cm) to 3 inches (7.62 cm), is intended to prevent a shift in the exploitation pattern to younger fish in order to supply the juvenile export market.

With so many uncertainties and the need for caution surrounding the impacts of the emerging juvenile fishery and the displacement of effort from

other fisheries, the Council has started preparing an FMP amendment to regulate fishing for silver hake. Except for the Cultivator Shoal program, fishing for silver hake is currently unregulated and an FMP amendment is required in order to establish a management regime for the entire fishery. However, because of the length of time required for the FMP amendment process, and due to the concerns stated by industry members, as noted above, the Council initiated this framework action for the purpose of implementing conservation measures as quickly as possible for the ongoing Cultivator Shoal fishery.

Framework Adjustment 3 to the FMP limited the amount of regulated species onboard vessels using small mesh to either 500 lb (226.8 kg) or 10 percent of the weight of non-regulated species, whichever is less. In this rule, NMFS is adding language to the possession limit section with the intent of clarifying how this adjustment pertains to the Cultivator Shoal whiting fishery.

NMFS is amending the multispecies regulations following the procedure for framework adjustments established by Amendment 5 and codified in 50 CFR 651, subpart C. The Council followed this procedure when making adjustments to the FMP, by developing and analyzing the actions over the span of a minimum of two Council meetings, on May 12 and June 29, 1994. The Council provided the public with advance notice of both the proposal and the analysis, and opportunity to comment on them prior to and at the June 29 Council meeting. Upon review of the analysis and public comment, the Council recommended to the Regional Director that the measures contained in Framework Adjustment 6 be published as a final rule. The Regional Director has further determined that the measures in Framework Adjustment 6 are appropriate to publish as a final rule.

Comments and Responses

In addition to the general public notification, the Council sent a letter to each person who applied for authorization to fish in the Cultivator Shoal Whiting Fishery Program informing him or her of the Council's intent to take action, describing the proposals under consideration, advising them of the availability of relevant documents and analysis, and inviting comment. During the comment period spanning the two required Council meetings, several members of the public commented in favor of the 3-inch (7.62-cm) mesh proposal, and one fisher opposed it on the grounds that it would reduce flexibility in using different mesh sizes. NMFS believes that an increase in mesh size is warranted to protect the juvenile component of the whiting stocks, and hence the long-term viability of the fishery. One individual questioned the scientific basis for the mesh-size increase. Generally, an increase in mesh size correlates with fewer small fish being caught, increasing the potential yield from the fishery by reducing the revenues lost due to discarding or industrial use of the catch. The traditionally preferred market size for silver hake has been 10 inches (25.4 cm) or greater. According to silver hake selection curves, approximately 22 percent of 10-inch (25.4-cm) fish would be caught by 3-inch (7.62-cm) mesh, as opposed to approximately 32 percent with a 2½-inch (6.35-cm) mesh. With the increased selectivity of the larger mesh, discards that are predominantly of fish under 10 inches (25.4 cm) may be reduced significantly. Other comments focused on the minimum fish size and tolerance provision that the Council removed from its proposal. These comments were taken into account by the Council and NMFS in developing and approving these measures.

Classification

This final rule is exempt from review under E.O. 12866.

The Assistant Administrator for Fisheries, NOAA, finds there is good cause to waive prior notice and opportunity for comment under 5 U.S.C. 553(b)(B). The provision of advance notice as described in this rule and public meetings held by the Council to discuss the management measures implemented by this rule provided adequate prior notice and opportunity for public comment to be considered. Thus, additional opportunity for public comment is unnecessary. Because no proposed rule was required, this action is exempt from the procedures of the Regulatory Flexibility Act.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 13, 1994.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

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

2. Section 651.20 is amended by revising paragraph (a)(4)(i)(B) to read as follows:

§ 651.20 Regulated mesh areas and restrictions on gear and methods of fishing.

(a) * * *

(4) * * *

(i) * * *

(B) A minimum mesh size of 3 inches (7.62 cm) applied to the first 160 meshes counted from the terminus of the net;

* * * * *

3. Section 651.27 is amended by revising paragraph (a)(1)(ii)(A) to read as follows:

§ 651.27 Possession limits.

(a) * * *

(1) * * *

(ii) * * *

(A) Any vessel lawfully fishing with or possessing onboard nets of mesh smaller than the regulated minimum size as specified in § 651.20(a)(2) while fishing in the small-mesh exemption area or Cultivator Shoal whiting fishery exemption area as described under and in accordance with § 651.20(a)(3) and § 651.20(a)(4), respectively, or any vessel fishing with nets of mesh smaller than the regulated minimum size as specified in § 651.20(c) and (d), is prohibited from possessing onboard at any time during a trip, or landing per trip, regulated species in excess of 10 percent, by weight, of all other species on board, or 500 lb (226.8 kg), whichever is less.

* * * * *

[FR Doc. 94–23045 Filed 9–16–94; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 180
Monday, September 19, 1994

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AF04

Steam Generator Tube Integrity for Operating Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission is considering amending its regulations regarding steam generator tube surveillance and maintenance at operating nuclear power plants. The advanced notice of proposed rulemaking (ANPRM) considers regulatory approaches that would maintain adequate assurance of steam generator tube integrity while allowing a more appropriate approach to steam generator surveillance and maintenance activities at nuclear power plants. The NRC is issuing this ANPRM to invite comments, advice, and recommendations from interested parties on the proposed steam generator rule.

DATES: The comment period expires December 5, 1994. 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.

ADDRESSES: Mail comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch. Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays. Examine copies of comments received at: The NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: T.A. Reed, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2795.

SUPPLEMENTARY INFORMATION:

Background

Steam generator tube degradation at nuclear power plants continues to be a problem for the nuclear industry. Industry actions have been effective in controlling many of the forms of degradation experienced in late 1970s and early 1980s; however, new degradation mechanisms continue to occur. State-of-the-art nondestructive inspection and tube repair methods have improved significantly in recent years. Changes in types of degradation being experienced and improvements in inspection and tube repair technology have made the NRC's existing regulatory requirements and guidance out-of-date and in some cases overly conservative or impractical. In addition, the NRC staff has determined that factors other than the material tube degradation should be considered when assessing tube integrity.

The objective of the proposed rule would be to maintain steam generator tube integrity such that there is an extremely low probability of steam generator tube leakage that could result in core damage or otherwise exceed allowable off-site doses while allowing a reasonable approach to steam generator surveillance and maintenance activities (i.e., degradation-specific management). A performance-based rule with quantitative criteria would achieve the desired goals without being prescriptive in nature. A flexible rule would accommodate changes in operating experience and technology while giving incentives for the industry to continue to improve the state-of-the art tube inspection and repair methods. Incorporation of an integrated approach considers the overall factors of safety and risk, including systems and radiological assessments.

The NRC staff's rulemaking effort would establish a flexible framework that allows steam generator tube integrity to be addressed using a degradation-specific management approach. This approach involves establishing and implementing preventive measures such as inspection, evaluation, and repair criteria that are applicable to distinct steam generator degradation mechanisms, and default criteria for the remaining forms of steam generator tube degradation where experience does not enable a degradation-specific approach. The NRC staff's rulemaking effort would also address issues relevant to containment bypass probability and severe accidents associated with bypass of containment. The NRC staff would consider application of more realistic analytical assumptions, as well as defense-in-depth measures that could be implemented to further ensure safety. The proposed rule would acknowledge new degradation mechanisms and technological advances in inspection techniques to improve characterization of these mechanisms.

Recognizing that the steam generator rule would contain broad criteria while an associated regulatory guide would contain more detailed guidance, a proposed outline of the NRC staff's perception of the necessary elements of a steam generator rule follows:

(a) Applicability
(b) Definitions
(c) Requirements
(1) Licensee Surveillance and Maintenance Program
  (i) Preservice and Inservice Inspection Program
  (ii) Water Chemistry Program
  (iii) Tube Integrity
  (iv) Repair Criteria
  (v) Repair Methods
  (vi) Nondestructive Examination Considerations
  (vii) Normal Operating Primary-to-Secondary Leakage Monitoring/ Limits
(2) Accident Mitigation
  (i) Accident Condition Primary-to-Secondary Leakage Monitoring
  (ii) Procedures
  (iii) Operator Training
(3) Radiological Consequences
(d) Severe Accident Considerations
(e) Implementation

Specific Considerations

Comments, advice and recommendations on a proposed rule reflecting the aforementioned features and any other pertinent points are invited from all interested persons. Particularly, comments and supporting reasons are requested on the following questions:

1. What are appropriate performance based criteria that should be included in the steam generator proposed rule to address steam generator inspection

scope and frequency, nondestructive examination (NDE) equipment capabilities, NDE data analyst capabilities, performance demonstration and qualification of NDE systems, steam generator water chemistry requirements, flaw acceptance criteria, and steam generator tube repair methods?

2. What are the appropriate performance based criteria that should be incorporated into the proposed rule to define adequate tube integrity (vis-a-vis 10 CFR 50 Appendix A GDC 14)?

3. What information should be part of the steam generator proposed rule, and what information should be addressed in a Regulatory Guide?

4. How should the proposed rule be structured to assure that licensees make use of available operational experience and data applicable to steam generator integrity, and that licensees can establish and readily update steam generator programs?

5. How should the proposed rule address new or replacement steam generators versus degraded steam generators?

6. Should the Regulatory Guide be prescriptive in terms of the methods to be used to ensure that the proposed rule's performance criteria are achieved?

7. Should the proposed rule require licensees to submit their programs to NRC for review and approval before implementation?

8. What requirements should be instituted to provide improved or additional monitoring of primary-to-secondary leakage as a means to enhance defense-in-depth relative to steam generator tube degradation?

9. What changes should be made in the NUREG–0800 radiological calculation guidance used to address the safety significance of steam generator tube leakage and rupture?

10. What beyond design basis considerations related to steam generator tube integrity should be addressed during the rulemaking process (e.g., the potential for containment bypass)?

11. How should tube failure prevention and mitigation measures be balanced in the proposed rule?

12. What interim measures are appropriate to allow continued operation of a unit in which new degradation modes are discovered?

13. Is the proposed rulemaking action considered a necessary or preferred course of action for addressing steam generator maintenance and surveillance issues, or are there other alternative regulatory mechanisms that are equally effective for addressing these issues? If alternatives to rulemaking are preferred, describe the preferred alternatives, including the pros and cons of pursuing the alternative course of action.

14. How should the steam generator rule or associated Regulatory Guide address the following technical issues: (1) Calculation of tube leakage following postulated events such as the main steam line break and the potential for this leakage to exceed the make-up capacity of the refueling water storage tank (supply source for the emergency core cooling system), (2) application of eddy current parameters such as voltage that are indirect measures of tube structural or leakage integrity (as compared to more direct measures such as crack depth or crack length), and (3) calculation of radiologically significant isotope concentrations in released materials (I–131 equivalent) following postulated events such as the main steam line break with steam generator tube leakage where there is a paucity of data on fission product iodine release rates.

The preliminary views expressed in this notice may change in light of comments received. In any case, there will be an opportunity later for additional public comment in connection with any proposed rule that may be developed by the NRC.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and record keeping requirements.

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Public Law 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Public Law 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Public Law 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Public Law 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

Dated at Rockville, Maryland, this 8th day of September 1994.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 94–23136 Filed 9–16–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–CE–06–AD]

Airworthiness Directives; Cessna Aircraft Company Models T303, 402C, 404, 414A, and 421C Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede AD 93–05–03, which currently requires repetitively inspecting each fuel inlet float valve in accordance with certain test procedures on Cessna Aircraft Company (Cessna) Models T303, 402C, 404, 414A, and 421C airplanes, and replacing any valve that does not pass this test. The manufacturer has developed fuel inlet float valves of improved design, and the Federal Aviation Administration (FAA) has determined that the improved valves should be installed to reduce the number of repetitive tests currently required by AD 93–05–03. The proposed action would require installing these fuel inlet float valves of improved design. The actions specified by the proposed AD are intended to prevent possible loss of engine power caused by failure of a fuel inlet float valve.

DATES: Comments must be received on or before November 28, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–06–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Cessna Aircraft Company, Customer Services, P.O. Box 1521, Wichita, Kansas 67201. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Charles D. Riddle, Aerospace Engineer,

FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946–4144; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94–CE–06–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–06–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

On March 4, 1993, the FAA issued AD 93–05–03, Amendment 39–8508 (58 FR 13406, March 11, 1993), in order to require a certain fuel inlet float valve test on Cessna Models T303, 402C, 404, 414A, and 421C airplanes, and replacement of any valve that does not pass this test. An accident involving a Model 402C airplane where the fuel inlet valve failed in the open position prompted that action.

Since AD 93–05–03 became effective, Cessna has developed fuel inlet float valves of improved design, and the FAA has determined that installation of these improved valves serves as a basis for reducing the number of repetitive tests currently required by AD 93–05–03.

In addition, Cessna has issued Service Bulletin (SB) MEB93–10, dated December 3, 1993, which specifies procedures for replacing fuel inlet float valves; and (2) accomplishing an installation test.

After examining the circumstances and reviewing all available information related to the incidents described above including the referenced service information, the FAA has determined that the fuel inlet float valves of improved design should be incorporated on the referenced airplanes to prevent possible loss of engine power caused by failure of a fuel inlet float valve.

Since an unsafe condition has been identified that is likely to exist or develop in other Cessna Models T303, 402C, 404, 414A, and 421C airplanes of the same type design, the proposed AD would supersede AD 93–05–03 with a new AD that would require replacing the fuel inlet float valves with parts of improved design or modifying the existing part and periodically accomplishing functional tests to assure proper operation. The proposed actions would be accomplished in accordance with the ACCOMPLISHMENT INSTRUCTIONS supplement to Cessna SB MEB93–10, dated December 3, 1993.

The replacement compliance time is presented in calendar time instead of hours time-in-service (TIS). Operators in commuter service can put up to 200 hours TIS in one calendar month while a general aviation operator may not utilize the airplane 200 hours TIS in one calendar year. The calendar time compliance will allow commuter operators the option of accomplishing the actions to coincide with regularly scheduled maintenance.

The FAA estimates that 1,641 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 22 workhours (15 workhours for replacement and 7 workhours for installation) per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $3,144 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $7,144,914. This figure is based on the assumption that no affected airplane owner/operator has accomplished the proposed valve installation.

Cessna has informed the FAA that enough improved fuel valves have been sold to equip approximately 1,040 of the affected airplanes. Assuming that these valves are installed on Cessna Models T303, 402C, 404, 414A, and 421C airplanes, the proposed cost impact upon U.S. operators would be reduced from $7,144,914 to $2,616,754.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [AMENDED]

2. Section 39.13 is amended by removing AD 93–05–03, Amendment 39–8508 (58 FR 13406, March 11, 1993), and by adding a new airworthiness directive to read as follows:

The Cessna Aircraft Company: Docket No. 94–CE–06–AD; Supersedes AD 93–05–03, Amendment 39–8508.

Applicability: The following model and serial number airplanes, certificated in any category:

Model	Serial Nos.
T303	T30300001 through T30300315.
402C	402C0001 through 402C1020.
404	404–0001 through 404–0859.
414A	414A0001 through 414A1212.
421C	421C0001 through 421C1807.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent possible loss of engine power caused by failure of a fuel inlet float valve, accomplish the following:

(a) For airplanes equipped with fuel inlet float valve part numbers (P/N) 9910242–1, 9910242–4, 9910242–5, 9910242–6, 9910242–7, 9910242–8, 9910242–205, 9910242–206, 9910242–207, and 9910242–208, accomplish the following:

(1) Within the next 200 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (compliance with AD 93–05–03), perform the appropriate valve test in accordance with paragraph 2. Functional Test Procedure or paragraph 3. Installation Test Procedure in the ACCOMPLISHMENT INSTRUCTIONS supplement to Cessna Service Bulletin (SB) MEB93–10, dated December 3, 1993. Accomplish these tests thereafter at intervals not to exceed 200 hours TIS until the fuel inlet float valves are replaced with a P/N 9910242–11 or P/N 9910242–12 valve, and then accomplish the appropriate valve test at intervals not to exceed 600 hours TIS.

(2) Within 12 calendar months after accumulating 1,800 hours TIS on a fuel inlet float valve or within the next 12 calendar months after the effective date of this AD, whichever occurs later, replace the valve with a P/N 9910242–11 or P/N 9910242–12 fuel inlet float valve in accordance with paragraph 4. Valve Replacement in the ACCOMPLISHMENT INSTRUCTIONS supplement to Cessna SB MEB93–10, dated December 3, 1993. Thereafter, accomplish either the functional or installation test required by paragraph (a)(1) of this AD at intervals not to exceed 600 hours.

Note 1: If the number of hours TIS accumulated on a fuel inlet float valve is unknown, airplane hours TIS may be used.

(b) For airplanes equipped with fuel inlet float valve P/N 9910242–9 or P/N 9910242–10, accomplish the following:

(1) Within the next 200 hours TIS after the effective date of this AD, unless already accomplished (compliance with AD 93–05–03), perform the appropriate valve test in accordance with paragraph 2. Functional Test Procedure or paragraph 3. Installation Test Procedure in the ACCOMPLISHMENT INSTRUCTIONS supplement to Cessna SB MEB93–10, dated December 3, 1993. Accomplish the appropriate valve test thereafter at intervals not to exceed 200 hours TIS until the fuel inlet float valves are modified as specified in paragraph (b)(2) of this AD, and then accomplish the appropriate valve test at intervals not to exceed 600 hours TIS.

(2) Within 12 calendar months after the effective date of this AD, install the K74D retainer kit in accordance with PROCEDURE No. P74D, which is included with the ACCOMPLISHMENT INSTRUCTIONS supplement to Cessna SB MEB93–10, dated December 3, 1993. Thereafter, accomplish the functional and installation tests required by paragraph (b)(1) of this AD at intervals not to exceed 600 hours.

Note 2: Installation of the K74D retainer kit modifies the P/N 9910242–9 or P/N 9910242–10 fuel inlet float valves to the P/N 9910242–11 or P/N 9910242–12 configuration.

(c) For valves failing any repetitive installation or functional test required by paragraph (a)(1), (a)(2), (b)(1), and (b)(2) of this AD, prior to further flight, accomplish the following (unless parts are not available and then comply with the requirements of paragraph (d) of this AD):

(1) Replace the fuel inlet float valve with a P/N 9910242–11 or P/N 9910242–12 valve in accordance with paragraph 4. Valve Replacement in the ACCOMPLISHMENT INSTRUCTIONS supplement to Cessna SB MEB93–10, dated December 3, 1993.

(2) Accomplish the installation test contained in paragraph 3. Installation Test Procedure in the ACCOMPLISHMENT INSTRUCTIONS supplement to Cessna SB MEB93–10, dated December 3, 1993. Accomplish the appropriate valve test thereafter at intervals not to exceed 600 hours TIS.

(d) If any fuel valve replacement is necessary and the replacement parts are not available, accomplish the following provided the parts have been ordered from the manufacturer and are installed within 25 hours TIS after availability:

(1) Incorporate the following into the Limitations Section of the Pilots Operating Handbook (POH) and FAA-approved Airplane Flight Manual (AFM):

(i) For the Model T303 airplanes: UNUSABLE FUEL: Indicated fuel quantity below 36 pounds (6 gallons) in each main tank is unusable.

(ii) For the Models 402C, 404, 414A, and 421C airplanes: UNUSABLE FUEL: Indicated fuel quantity below 90 pounds (15 gallons) in each main tank is unusable.

(iii) For the Model 404 airplanes: FUEL QUANTITY: Minimum indicated fuel quantity for takeoff is 228 pounds (38 gallons) in each main tank.

(iv) For the Models 402C, 414A, and 421C airplanes: FUEL QUANTITY: Minimum indicated fuel quantity for takeoff is 210 pounds (35 gallons) in each main tank.

(2) Fabricate placards, as applicable, with the following words in letters at least 0.10-inch in height and install these placards within the pilot's clear view on the instrument panel in close proximity to the fuel quantity gage:

(i) For Models 402C, 404, 414A, and 421C airplanes: "UNUSABLE FUEL-INDICATED FUEL QUANTITY BELOW 90 POUNDS (15 GALLONS) IN EACH MAIN TANK IS UNUSABLE".

(ii) For Model T303 airplanes: "UNUSABLE FUEL-INDICATED FUEL QUANTITY BELOW 36 POUNDS (6 GALLONS) IN EACH MAIN TANK IS UNUSABLE".

(3) For the Model 404 airplanes, fabricate four placards with the following in letters at least 0.10-inch in height: "157 GAL". Install these placards covering the four existing "172 GAL" markings on the existing placard around the engine fuel selector handles.

(4) For the Models 402C, 414A, and 421C airplanes, fabricate four placards with the following in letters at least 0.10-inch in height: "88 GAL". Install these placards covering the four existing "103 GAL" markings on the existing placard around the engine fuel selector handles.

(5) For the Model T303 airplanes, fabricate the following placards in letters at least 0.10-inch in height:

(i) "423 LBS" (2 placards). Install these placards covering the two existing "459 LBS" markings on the existing placard around the engine fuel selector handles.

(ii) "363 LBS" (1 placard). Install this placard covering the existing "399 LBS" marking on the existing placard around the engine fuel selector handles.

(6) For all affected Model airplanes, fabricate a placard with the following words in letters at least 0.10-inch in height and install this placard within the pilot's clear view on the instrument panel: "ROLLING, TURNING TAKEOFFS ARE PROHIBITED."

Note 3: The placard requirements may already be accomplished in accordance with either superseded AD 92–27–20 or AD 93–05–03 (superseded by this action). These placard requirements are eliminated upon installation of the improved fuel valves as required by this AD.

Note 4: The repetitive functional or installation test is not required if parts are not available and the requirements of paragraph (d) of this AD (including all subparagraphs) are complied with.

(e) 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.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Manager, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(g) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) This amendment supersedes AD 93–05–03, Amendment 39–8508.

Issued in Kansas City, Missouri, on September 12, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–23079 Filed 9–16–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–CE–54–AD]

Airworthiness Directives; Cessna Aircraft Company Engine Oil Filter Adapters, Part Numbers 0450404–1, 0450404–3, 0556004–1, 0556010–1, 1250403–6, 1250922–1, and 1250922–2, Installed on Aircraft

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Cessna Aircraft Company (Cessna) engine oil filter adapters, part numbers 0450404–1, 0450404–3, 0556004–1, 0556010–1, 1250403–6, 1250922–1, and 1250922–2, installed on aircraft. The proposed action would require applying torque paint between the engine filter adapter assembly, nut, and oil pump housing; inspecting the oil filter and adapter assembly for oil leakage and proper installation of the adapter retaining nut and fretting of associated threads (security), and replacing any oil filter and adapter assembly with oil leakage or security problems; and repetitively inspecting the torque paint for cracks or misalignment, and reinspecting the oil filter and adapter assembly if torque paint cracks or misalignment is found. Reports of loose or separated engine oil filter adapters on several airplanes prompted the proposed action. The actions specified by the proposed AD are intended to prevent loss of engine oil caused by loose or separated oil filter adapters, which could result in engine stoppage while in flight and loss of control of the airplane.

DATES: Comments must be received on or before November 28, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–54–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Cessna Aircraft Company, Customer Services, P.O. Box 1521, Wichita, Kansas 67201. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946–4143; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–54–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–54–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received 10 reports of loose or separated engine oil filter adapters on in-service airplanes. The affected adapters are Cessna engine oil filter adapters, part numbers 0450404–1, 0450404–3, 0556004–1, 0556010–1, 1250403–6, 1250922–1, and 1250922–2. Three of the incidents resulted in an airplane accident, one serious. These engine oil filter adapters are installed on, but not limited to the following:

(1) The following Cessna model and series airplanes with an affected adapter installed at manufacture:

Model or series	Serial Nos.
150	17001 through 17999, 59001 through 59018, and 15059019 through 15079405.
A150	A1500001 through A1500734.
F150	F150–0001 through F150–0529 and F15000530 through F15001428.
FA150	FA1500001 through FA1500120.
FRA150	FRA1500121 through FRA1500336.
172	28000 through 47746 and 17247747 through 17256512.
F172	F172–0001 through F172–0654 and F17200655 through F17200804.
FR172	FR172–0001 through FR17200559 and FR17200561.
180	30000 through 50911 and 18050912 through 18053203.
182	33000 through 53007 and 18253008 through 18268293.
A182	A182–0057 through A182–0148.
F182	F18200001 through F182000169.
185	185–0001 through 185–1599 and 18501600 through 18504410.
188	188–0001 through 188–0572, 18800573 through 18803945, 18800967T through 18803968T, and T18803307T through T18803968T.
205	205–0001 through 205–577.
206	206–0001 through 206–0275.
P206/TP206	P206–0001 through P206–0603 and P20600604 through P20600647.
U206/TU206	U206–0276 through U206–1444 and U20601445 through U20606459.
207/T207	20700001 through 20700734.
210	57001 through 57575 and 21057576 through 21064780.
P210	P21000001 through P21000811.
T210	T210–0001 through T210–0454.

(2) Airplanes that have an affected full flow engine oil adapter installed by field approval, including, but not limited to the following model or series airplanes:

Manufacturer	Series/Models
Twin Commander.	Models 200D, 500A, 500C, 500D, and 685.
Beech	33, 35, 36, 55, 58, and 95 Series.
Piper	PA46 Series.
Navion	Rangemaster.
Ryan Navion	Model L–17.
Wren	Model 460.
Bellanca	Models 260 and 300.

(3) Airplanes equipped with one of the following Teledyne Continental Motors model or model series engines:

O–470	IO–470	TSIO–470
O–520	IO–520	TSIO–520
GTSIO–520	IO–550	TSIO–550

Cessna has issued Service Bulletin (SB) SEB93–1, dated January 29, 1993, which specifies procedures for inspecting the engine oil filter and adapter assembly. Oil filter and assembly installation procedures and torque values are included in the applicable Cessna maintenance manual.

After examining the circumstances and reviewing all available information related to the incidents described above including the referenced service instructions, the FAA has determined that AD action should be taken to prevent loss of engine oil caused by loose or separated oil filter adapters, which could result in engine stoppage while in flight and loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other airplanes utilizing a Cessna engine oil filter adapter, part number 0450404–1, 0450404–3, 0556004–1, 0556010–1, 1250403–6, 1250922–1, or 1250922–2, of the same type design, the proposed AD would require (1) applying torque paint between the engine filter adapter assembly, nut, and oil pump housing; (2) inspecting the oil filter and adapter assembly for oil leakage and proper installation of the adapter retaining nut and fretting of associated threads (security), and replacing any oil filter and adapter assembly with oil leakage or security problems; and (3) repetitively inspecting the torque paint for cracks or misalignment, and reinspecting the oil filter and adapter assembly if torque paint cracks or misalignment is found.

The FAA estimates that 70,000 airplanes in the U.S. registry incorporate this engine oil filter and assembly and would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed initial inspection and torque paint application, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,850,000. This cost is based on the assumption that no operator has accomplished the initial inspection, and does not take into account the cost for repetitive inspections. The FAA has no way of determining how many repetitive inspections each individual operator would incur.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding a new AD to read as follows:

Cessna Aircraft Company: Docket No. 93–CE–54–AD.

Applicability: Engine Oil Filter Adapters, part numbers 0450404–1, 0450404–3, 0556004–1, 0556010–1, 1250403–6, 1250922–1, and 1250922–2, installed on, but not limited to the following:

(1) The following Cessna model and series airplanes with an affected adapter installed at manufacture:

Model or series	Serial Nos.
150	17001 through 17999, 59001 through 59018, and 15059019 through 15079405.
A150	A1500001 through A1500734.
F150	F150–0001 through F150–0529 and F15000530 through F15001428.
FA150	FA1500001 through FA1500120.
FRA150	FRA1500121 through FRA1500336.
172	28000 through 47746 and 17247747 through 17256512.
F172	F172–0001 through F172–0654 and F17200655 through F17200804.
FR172	FR172–0001 through FR17200559 and FR17200561.
180	30000 through 50911 and 18050912 through 18053203.
182	33000 through 53007 and 18253008 through 18268293.
A182	A182–0057 through A182–0148.
F182	F18200001 through F182000169.
185	185–0001 through 185–1599 and 18501600 through 18504410.
188	188–0001 through 188–0572, 18800573 through 18803945, 18800967T through 18803968T, and T18803307T through T18803968T.
205	205–0001 through 205–577.
206	206–0001 through 206–0275.
P206/TP206	P206–0001 through P206–0603 and P20600604 through P20600647.
U206/TU206	U206–0276 through U206–1444 and U20601445 through U20606459.
207/T207	20700001 through 20700734.
210	57001 through 57575 and 21057576 through 21064780.
P210	P21000001 through P21000811.
T210	T210–0001 through T210–0454.

(2) Airplanes that have an affected full flow engine oil adapter installed by field approval, including, but not limited to the following model or series airplanes:

Manufacturer	Series/Models
Twin Commander.	Models 200D, 500A, 500C, 500D, and 685.
Beech	33, 35, 36, and 55 Series.
Piper	PA46 Series.
Navion	Rangemaster.
Ryan Navion	Model L–17.
Wren	Model 460.
Bellanca	Models 260 and 300.

(3) Airplanes equipped with one of the following Teledyne Continental Motors model or model series engines:

O–470	IO–470	TSIO–470
O–520	IO–520	TSIO–520
GTSIO–520	IO–550	TSIO–550

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent loss of engine oil caused by loose or separated oil filter adapters, which could result in engine stoppage while in flight and loss of control of the airplane, accomplish the following:

(a) Within the next 100 hours time-in-service or upon removal of the engine oil filter, whichever occurs first, disassemble the engine oil filter assembly in accordance with the applicable maintenance manual, and accomplish the following:

(1) Inspect the oil filter and adapter assembly for oil leakage and proper installation of the adapter retaining nut and fretting of the associated threads (security) in accordance with Cessna Service Bulletin SEB93–1, dated January 29, 1993.

(2) Prior to further flight, replace any oil filter and adapter assembly with oil leakage or security problems.

(3) Apply torque paint between the engine filter adapter assembly, nut, and oil pump housing.

(4) Reassemble the engine oil filter assembly.

(5) The disassembly, replacement (if necessary), and assembly required by the paragraphs above shall be accomplished in accordance with the applicable Cessna maintenance manual.

Note 1: If the airplane has one of the applicable engine oil filter assemblies installed by field approval, it is the responsibility of the airplane owner/operator to obtain the applicable Cessna maintenance manual information, which includes torque values.

(b) Within 100 hours TIS after the inspection required by paragraph (a) of this AD, and thereafter at intervals not to exceed 100 hours TIS or upon removal of the engine oil filter, whichever occurs first, accomplish the following:

(1) Inspect the torque paint for cracks or misalignment.

(2) If any torque paint cracks or misalignment is found, prior to further flight, accomplish the requirements specified in paragraph (a) of this AD, including all subparagraphs.

(c) Replacing the engine oil filter assembly does not eliminate the repetitive inspection requirement of this AD.

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

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(f) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 12, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Office.

[FR Doc. 94–23080 Filed 9–16–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 94–NM–88–AD]

Airworthiness Directives; Lockheed Model 382 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Lockheed Model 382 series airplanes. This proposal would require inspection of a kingpin riser on the lower surface of the outer wing to determine fastener placement. The proposed AD also would require repetitive inspections for fatigue cracks in the kingpin riser if the fasteners are positioned outside certain limits, and repair, if necessary. This proposal is prompted by reports of insufficient distance between the center of the outermost fastener on the kingpin riser and the edge of the riser, which can adversely affect the fatigue resistance of the outer wing assembly. The actions specified by the proposed AD are intended to prevent structural failure of the lower surface of the outer wing due to fatigue cracks in the kingpin riser.

DATES: Comments must be received by November 10, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–88–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Lockheed Aeronautical Systems Support Company, Field Support Department, Department 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Certification Office, Suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia 30349.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Flight Test Branch, ACE–160A, FAA, Small Airplane Directorate, FAA, Atlanta Certification Office, Suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia 30349; telephone (404) 991–3915; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped

postcard on which the following statement is made: "Comments to Docket Number 94–NM–88–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–88–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports that certain outer wing assemblies on Lockheed Model 382 series airplanes were manufactured with insufficient distance between the center of the outermost fastener on the kingpin riser and the edge of the riser (between outer wing stations 29.0 and 36.0). Insufficient distance between the fastener and the riser edge adversely affects the fatigue resistance of the outer wing assembly due to fatigue cracks in the kingpin riser. Such fatigue cracking, if not corrected, could result in structural failure of the lower surface of the outer wing assembly.

The FAA has reviewed and approved Hercules Service Bulletin 382–57–74 (82–688), dated January 31, 1994, which describes procedures for an ultrasonic inspection of kingpin riser number 18 on the lower surface of the outer wing to determine the distance between the center of the outermost fastener on the kingpin riser and the edge of the riser. In addition, for fasteners positioned outside certain limits described in the service bulletin, the service bulletin describes repetitive ultrasonic inspections to detect cracks in the kingpin riser, and repair, if necessary.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require an inspection of a kingpin riser on the lower surface of the outer wing to determine fastener placement; and repetitive inspections for fatigue cracks in the kingpin riser if the fasteners are positioned outside certain limits, and repair, if necessary. The inspections would be required to be accomplished in accordance with the service bulletin described previously. The repair would be required to be accomplished in accordance with a method approved by the FAA.

There are approximately 20 Lockheed Model 382 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 20 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,400, or $220 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Lockheed Aeronautical Systems Company: Docket 94–NM–88–AD.

Applicability: Model 382, 382B, 382E, 382F, and 382G series airplanes; as listed in Hercules Service Bulletin 382–57–74 (82–688), dated January 31, 1994; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the outer wing assembly, accomplish the following:

(a) Within 30 days after the effective date of this AD, or prior to the accumulation of 18,000 total flight hours, whichever occurs later, perform an ultrasonic inspection to determine the distance between the edge of each of the six most outboard fasteners on kingpin riser number 18 and the edge of the riser, in accordance with Appendix A of Hercules Service Bulletin 382–57–74 (82–688), dated January 31, 1994.

(1) If all six of these fasteners are positioned 0.31 inch or more from the kingpin riser edge: No further action is required by this AD.

(2) If any of the six most outboard fasteners is positioned less than 0.31 inch from the edge of the kingpin riser: Prior to the applicable threshold specified in Table 1 of Hercules Service Bulletin 382–57–74 (82–688), or prior to further flight if that threshold has been exceeded as of the effective date of this AD, perform an ultrasonic inspection to detect cracks in the kingpin riser, in accordance with Inspection Procedure SP–265 (Appendix B) of the service bulletin.

Note 1: For airplanes on which an outerwing replacement is installed, the total flight hours threshold is counted from the time of outer wing replacement.

(i) If no crack is found, repeat this inspection, thereafter, at intervals not to exceed 7,400 flight hours.

(ii) If any cracked kingpin riser is found, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Repeat this inspection, thereafter, at intervals not to exceed 7,400 flight hours.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO, FAA, Small 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, Atlanta ACO.

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

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

Issued in Renton, Washington, on September 13, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–23099 Filed 9–16–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–79–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes. This proposal would require inspections to detect cracking of H–11 attach bolts of the upper vertical stabilizer and replacement of these bolts and associated nuts with Inconel bolts and nuts. This proposal is prompted by reports of failure of the attach bolts of the upper vertical stabilizer due to stress corrosion. The actions specified by the proposed AD are intended to prevent undetected cracked or failed attach bolts that may lead to reduced structural integrity of the vertical stabilizer.

DATES: Comments must be received by November 10, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–79–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Department L51, M.C. 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; telephone (310) 988–5238; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–79–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–79–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 25, 1993, the FAA issued AD 93–17–09, Amendment 39–8680 (58 FR 54949, October 25, 1993), which is applicable to McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes. That AD requires the implementation of a Structural Inspection Document (SID) program of structural inspections to detect fatigue cracking, and repair or replacement, as necessary, to ensure the continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal. AD 93–17–09 requires inspection of the attach bolts of the upper vertical stabilizer [designated Principal Structural Element (PSE) 55.10.001/002 in McDonnell Douglas Report Number L26–012, "DC–10 Supplemental Inspection Document," which is referenced in that AD as the appropriate source of service information] under the fleet leader operator sampling criteria. The fatigue life for these attach bolts is (N_{th}) 119,334 flight hours. The sampling period for this PSE started in September 1989, and will end in June 2001. Sampling inspections are to be accomplished within that interval for airplanes in the candidate fleet that have accumulated more than 59,667 total flight hours (N_{th}/2).

The inspection threshold for the SID program was based upon a fatigue analysis conducted by the manufacturer. The FAA is not aware of any operator having, as yet, accomplished the inspection of these bolts for the purpose of complying with the requirements of AD 93–17–09. McDonnell Douglas has advised the FAA that the planning data contained in Volume III of the SID will be revised to indicate that H–11 bolts have been replaced with new Inconel bolts.

Since the issuance of that AD, operators of Model DC–10 series airplanes have recently reported that the attach bolts of the upper vertical stabilizer had failed on several in-service airplanes. These failures had occurred on airplanes that had accumulated between 40,000 total flight hours and 67,000 total flight hours. The attach bolts and associated nuts on these airplanes were made of H–11 material, which is susceptible to failure due to stress corrosion. The FAA has determined that replacement of the H–11 bolts and associated nuts with Inconel bolts and associated nuts will eliminate the possibility of failure due to stress corrosion. Failure of the attach bolts in the upper vertical stabilizer, if not corrected, could compromise the structural integrity of the vertical stabilizer.

The FAA has reviewed and approved Revision 1, dated March 8, 1991, and Revision 2, dated August 4, 1994, of McDonnell Douglas DC–10 Service Bulletin 55–20, which describe procedures for repetitive ultrasonic inspections at 12-month intervals to detect cracking in H–11 attach bolts of the upper vertical stabilizer, and replacement of H–11 attach bolts and associated nuts with Inconel attach bolts and associated nuts.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would

require ultrasonic inspections at 18-month intervals to detect cracking in H–11 attach bolts of the upper vertical stabilizer, and replacement of H–11 attach bolts and associated nuts with Inconel attach bolts and associated nuts. The actions would be required to be accomplished in accordance with the procedures specified in the service bulletins described previously.

Although the referenced service bulletins recommend that these inspections be performed at 12-month intervals, the FAA has determined that 18-month intervals will not adversely affect safety and will allow these repetitive inspections to be performed at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available.

There are approximately 426 McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 269 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to accomplish the proposed inspections at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the inspections proposed by this AD on U.S. operators is estimated to be $29,590, or $110 per airplane, per inspection cycle.

It would take approximately 8 work hours per airplane to accomplish the proposed replacements at an average labor rate of $55 per work hour. Required parts would cost approximately $9,009 per airplane. Based on these figures, the total cost impact of the replacements proposed by this AD on U.S. operators is estimated to be $2,541,781, or $9,449 per airplane.

Based on the above figures, the total cost impact of the inspections and replacements proposed by this AD on U.S. operators is estimated to be $2,571,371, or $9,559 per airplane.

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

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, most prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this proposed AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this proposed AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the proposed actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this proposed AD would be redundant and unnecessary.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 94–NM–79–AD.

Applicability: All Model DC–10–10, –10F, –15, –30, –30F, –40, and –40F series airplanes, and KC–10A (military) airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent undetected cracked or failed attach bolts that may lead to reduced structural integrity of the vertical stabilizer, accomplish the following:

(a) Within 12 months after the effective date of this AD, perform an ultrasonic inspection to detect cracking in the attach bolts of the upper vertical stabilizer, in accordance with McDonnell Douglas DC–10 Service Bulletin 55–20, Revision 2, dated August 4, 1994, unless accomplished within the last 18 months prior to the effective date of this AD in accordance with McDonnell Douglas DC–10 Service Bulletin 55–20, Revision 1, dated March 8, 1991, or Revision 2, dated August 4, 1994.

(1) If no cracking is detected in any bolt, repeat the inspection of the uncracked bolt thereafter at intervals not to exceed 18 months, until the requirements of paragraph (c) of this AD are accomplished.

(2) If cracking is detected in any bolt, prior to further flight, replace the cracked bolt and associated nut with a new Inconel attach bolt and associated nut, in accordance with the service bulletin. No further action is required by this AD for the new Inconel bolts and associated nuts.

(b) Compliance with the inspections required by paragraph (a) of this AD constitutes compliance with the inspections and reports required by paragraph (b) of AD 93–17–09, Amendment 39–8680, for Principal Structural Element (PSE) 55.10.001/002. However, after installation of new Inconel bolts and associated nuts, in accordance with the requirements of paragraphs (a) and (c) of this AD, PSE 55.10.001/002 must continue to be inspected in accordance with AD 93–17–09.

(c) Within 5 years after the effective date of this AD, replace all H–11 attach bolts and associated nuts of the upper vertical stabilizer with new Inconel attach bolts and associated nuts, in accordance with McDonnell Douglas DC–10 Service Bulletin 55–20, Revision 1, dated March 8, 1991; or Revision 2, dated August 4, 1994. Such replacement constitutes terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles 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, Los Angeles ACO.

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

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

Issued in Renton, Washington, on September 13, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–23100 Filed 9–16–94; 8:45 am]

BILLING CODE 4910–13–U

POSTAL SERVICE

39 CFR Part 111

Revisions to Standards for Palletization

AGENCY: Postal Service.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Postal Service published in the **Federal Register** on August 18, 1994, a proposal to amend Domestic Mail Manual (DMM) standards concerning the preparation of mail on pallets, 59 FR 42536–42540. The proposed revisions are intended to establish consistent standards for all classes of mail prepared on pallets. Such standards should result in the lowest combined costs of handling palletized mail for the Postal Service and its customers while facilitating consistent service for palletized mailings.

The Postal Service requested comments by September 19, 1994. Owing to the needs of the mailing public, from whom several requests for additional time were received, the Postal Service is extending the comment period to November 3, 1994.

DATES: Comments must be received on or before November 3, 1994.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Business Mail Acceptance, U.S. Postal Service Headquarters, 475 L'Enfant Plaza SW., Room 8430, Washington, DC 20260–6808. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 8430 at the above address.

FOR FURTHER INFORMATION CONTACT: Cheryl Beller, (202) 268–5166

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–23038 Filed 9–16–94; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ID 6–1–6300b; FRL–5056–6]

Approval and Promulgation of State Small Business Assistance Program: State of Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Idaho for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If the 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 on this document.

DATES: Comments on this proposed rule must be received in writing by October 19, 1994.

ADDRESSES: Written comments should be addressed to MontelLivingston, Environmental Protection Specialist (AT–082), Air Programs Section, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed 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 visiting day.

U.S. Environmental Protection Agency, Region 10, Air Programs Section, 1200 6th Avenue, Seattle, WA 98101.

The Idaho Department of Health and Welfare, Division of Environmental Quality, 1410 No. Hilton, Boise, ID 83706.

FOR FURTHER INFORMATION CONTACT: Dave Dellarco, Air Programs Section, 1200 6th Avenue, Seattle, WA 98101 (206/553–4978).

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action which is located in the rules section of this **Federal Register**.

Dated: August 15, 1994.

Jane S. Moore,

Acting Regional Administrator.

[FR Doc. 94–23106 Filed 9–16–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 52

[IN 12–3–5958B; FRL–5071–8]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) proposes to approve an April 18, 1994 State request for a site-specific revision to the Indiana sulfur dioxide State Implementation Plan (SO_2 SIP). This revision sets forth a schedule of SO_2 emission limitations applicable to Public Service Indiana's Gibson Generating Station (PSI Gibson) if the facility installs SO2 emission controls. In the final rules section of this **Federal Register**, the USEPA is approving the State's SIP revision as a direct final rule without prior proposal because USEPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA 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 the proposed rule. USEPA will not institute a second comment period on this notice. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments on this proposed rule must be received on or before October 19, 1994.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Air and Radiation Division, Regulation Development Section, Regulation Development Branch, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois.

FOR FURTHER INFORMATION CONTACT: Mary Onischak, Environmental Engineer, Regulation Development Branch, (AR–18J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–5954.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: September 2, 1994.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 94–23108 Filed 9–16–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 70

[AR001; FRL–5073–8]

Clean Air Act Proposed Interim Approval Operating Permits Program; the State of Arkansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes interim approval of the operating permits program submitted by the Arkansas Department of Pollution Control and Ecology (ADPCE) through the Governor of Arkansas for the purpose of complying with Federal requirements which mandate that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, with the exception of sources on Indian Lands.

DATES: Comments on this proposed action must be received in writing by October 19, 1994.

ADDRESSES: Written comments on this action should be addressed to Ms. Jole C. Luehrs, Chief, New Source Review Section, at the EPA Region 6 Office listed. Copies of the State's submittal and other supporting information used in developing the proposed rule are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before visiting day.

Environmental Protection Agency, Region 6, Air Programs Branch (6T-AN), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

Arkansas Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas 72219–8913.

FOR FURTHER INFORMATION CONTACT: Wm. Nicholas Stone, New Source Review Section (6T-AN), Environmental Protection Agency, Region 6, 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733, telephone (214) 655–7226.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the Clean Air Act as amended in 1990 ("the Act"), the EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires States to develop, and submit to the EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources, with the exception of sources on Indian Lands.

The Act requires that States develop and submit these programs to the EPA by November 15, 1993, and that the EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of 40 CFR part 70, the EPA may grant the program interim approval for a period of up to two years. If the EPA has not fully approved a program by two years after the November 15, 1993, date, or by the end of an interim program, it must establish and implement a Federal program.

II. Proposed Action and Implications

A. Analysis of State Submission

1. Support Materials

Pursuant to section 502(d) of the Act, the Governor of each State is required to develop and submit to the Administrator an operating permit program under State or local law or under an interstate compact meeting the requirements of title V of the Act. The Arkansas submittal was made under the signature of Governor Jim Guy Tucker in a letter to Acting Regional Administrator, Joe Winkle, EPA, Region 6, dated October 29, 1993. The program will be implemented in all areas of the State of Arkansas.

The State provided a general overview under Tab 1 of the submittal. This overview meets the requirements of 40 CFR 70.4(b)(1) by describing the State program in general terms.

Pursuant to 40 CFR 70.4(b)(3), the Governor is required to submit a legal opinion from the attorney general (or the attorney for the State air pollution control agency that has independent legal counsel) demonstrating adequate authority to carry out all aspects of a title V operating permit program. The Attorney General's (AG) Opinion appears under Tab 3 of the submittal. The Opinion is signed by the Chief of the Legal Division, ADPCE, certifying full authority to represent the State in all matters relating to the Department's environmental programs. This opinion adequately addresses the thirteen provisions listed at 40 CFR 70.4(b)(3)(i)-(xiii).

40 CFR 70.4(b)(4) requires the submission of relevant permitting program documentation not contained in the regulations, such as permit forms and relevant guidance to assist in the State's implementation of its permit program. The State provides relevant program documentation under Tab 4 of the submittal. This documentation includes a complete application form, permit form, and a guidance document. The submittal did not contain a model reporting form for the permitted facilities to report emissions to the regulatory authority. However, Arkansas Regulation 26.7(a) references the Federal reporting requirements at 40 CFR 70.6(a)(3). These provisions must be included or formally incorporated by reference. All sources subject to monitoring requirements must submit monitoring reports every six months

and must promptly report any deviation from permit requirements.

In the ADPCE operating permits program submittal, the ADPCE does not assert jurisdiction over Indian Lands or reservations. To date, no Indian Lands have been identified in the State of Arkansas. Title V sources located on Indian Lands in Arkansas will be subject to the Federal operating permits program, to be promulgated at 40 CFR part 71, or subject to the operating permits program of any Tribe delegated authority for treatment as a State under regulations being developed pursuant to section 301(d) of the Act.

2. Regulations and Program Implementation

The State submitted under Tab 2, Regulation 26, "Regulations of the Arkansas Operating Permit Program," as required at 40 CFR 70.4(b)(2). Regulation 26 follows the rule at 40 CFR part 70 very closely. Supporting documentation of procedurally correct adoption and copies of all applicable State statutes and regulations which authorize the part 70 program, including those governing State administrative procedures, were submitted with the State's program. Regulation 26 received written comments from March 25 through April 24, 1993, and a public hearing was held April 14, 1993. The response to comments was made by ADPCE on July 28, 1993. Sufficient evidence of their procedurally correct adoption was submitted and meets the requirements of 40 CFR 70.4(b)(2).

The following requirements, set out in the EPA's part 70 regulation are addressed in the State's submittal: (a) Provisions to determine applicability (40 CFR 70.3(a)), Regulation 26.3; (b) provisions to determine complete applications (40 CFR 70.5(a)(2)), Regulation 26.4; (c) public participation (40 CFR 70.7(h)), Regulation 26.6; (d) provisions for minor permit modifications (40 CFR 70.7(e)(2)), Regulation 26.10(b); (e) provisions for permit content (40 CFR 70.6(a)), Regulation 26.7; (f) provisions for operational flexibility (40 CFR 70.4(b)(12)), Regulation 26.8; (g) enforcement provisions (40 CFR 70.4(b)(5) and 70.4(b)(4)(ii)), the AG Opinion and Tab 5 of the submittal, Compliance Tracking and Enforcement.

Following is a discussion of certain specific provisions in the State's submission as they relate to requirements of 40 CFR part 70:

(a) Applicability criteria, including any criteria used to determine insignificant activities or emissions levels (40 CFR 70.4(b)(2) and 70.3(a)): Applicability criteria are defined at Regulation 26.3. Regulation 26.3(a)(3) specifies that new construction or modification at a part 70 source requires a new or modified part 70 permit before construction begins. However, the State regulation does not require that a source must first undergo a preconstruction permit review as outlined in Section 108, prevention of significant deterioration (PSD) supplement to the Arkansas SIP. The SIP has been submitted for recodification, with the PSD provisions at Regulation 19.9, and has not yet been acted on by the EPA. Regulation 26.3 must be amended to incorporate by reference the applicable PSD requirements.

Insignificant activities are addressed at Regulation 26.3(d) which refers to the SIP at Regulation 19.4(c). The SIP lists the following emissions for which a permit is not required: 1) comfort heating, cooling, and ventilation equipment; 2) portable internal combustion engines used in conjunction with temporary construction operations, or emergency standby generators; or 3) natural gas and oil exploration and production site equipment. An exemption may be obtained for these activities provided that operation of the equipment does not affect any provision of the Federal Clean Air Act and does not contribute to an exceedance of a National Ambient Air Quality Standard (NAAQS). No other federally regulated emissions are allowed an exemption under Regulation 26.

(b) Provisions to determine complete applications are listed at Regulation 26.4. The State references the required provisions for a complete application listed at 40 CFR 70.5(c). In order to receive full approval, the State must formally incorporate these provisions by reference or list them specifically in the regulation. Recommended language for formal incorporation by reference would read: "The Department hereby adopts and incorporates by reference those provisions of 40 CFR 70.5(c), as in effect on July 21, 1992."

Complete application forms, model permit, and instructions are located under Tab 4 of the submittal. These application forms may be amended without rulemaking to facilitate changes required by new applicable requirements. These provisions meet the requirements of 40 CFR 70.5(a)(2).

(c) Provisions for adequate public participation are found at Regulation 26.6. The State regulation provides for adequate public participation and notice to affected States for permit issuance, renewals, and reopenings. These provisions meet the requirements of 40 CFR 70.7(h).

(d) The rule at 40 CFR 70.7(e)(2) specifies criteria for minor permit modifications that are incorporated in the State regulations at Regulation 26.10(b). The rule at 40 CFR 70.7(e)(2)(i)(A)(5) and Regulation 26.10(b)(7) prohibits changes which constitute modifications under any provision of title I of the Act from being processed as a minor modification. "Title I modifications" in Arkansas, are determined by the permitting procedures federally approved into the Arkansas Plan of Implementation for Air Pollution Control (SIP). The SIP, Regulation 19.2, defines any increase in emissions as a modification. The State incorporates an additional criteria, Regulation 26.10(b)(1), that allows the minor permit modification process to be used for permit modifications that involve emission increases.

The additional criteria at Regulation 26.10(b)(1) allows the minor permit modification process to be used for permit modifications that involve emission increases not over 20% of the applicable definition of major source, or 15 tons/year of PM–10, or 0.6 tons/year of lead, whichever is less, based on potential to emit. 40 CFR 70.7(e)(3)(i) allows group processing of minor modifications that collectively meet this emission threshold, or a total of 5 tons per year (tpy) whichever is less, provided the minor modification criteria at 40 CFR 70.7(e)(2)(i)(A) are also met. However, the criteria for minor modifications at 40 CFR 70.7(e)(2)(i)(A), which applies to individual as well as group processing of minor modifications does not contain this allowance.

Therefore, Regulation 26.10(b)(1) is inconsistent with the rule at 40 CFR 70.7(e)(2)(i)(A)(5), as well as Regulation 26.10(b)(7). In order for Regulation 26 to provide minor modification procedures consistent with 40 CFR part 70, and as a condition of full approval, the ADPCE must revise Regulation 26.10(b)(1) or delete the allowance from the minor modification procedure.

(e) Provisions for permit content are found at Regulation 26.7. The State regulations require inclusion of the enumerated elements at 40 CFR 70.6(a), (b), and (c). In order to receive full approval, the State must formally incorporate these provisions by reference or list them specifically in the regulation. Recommended language for formal incorporation by reference would read: "The Department hereby adopts and incorporates by reference those provisions of 40 CFR 70.6(a), (b), and (c) as in effect on July 21, 1992."

Additional provisions are found to provide for adequate permit duration, allow a permit shield, provide for

general permits, and provide for temporary sources and emergency situations.

Part 70 of the operating permits regulations requires prompt reporting of deviations from the permit requirements. The rule at 40 CFR 70.6(a)(3)(iii)(B) requires the permitting authority to define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements. The State of Arkansas has not defined "prompt" in Regulation 26, and must do so in order to achieve full approval. With formal incorporation by reference and defining "prompt" with regard to reporting deviations, the provisions at Regulation 26.7 meet the requirements of 40 CFR 70.6.

(f) Provisions for operational flexibility and alternative scenarios are listed at Regulation 26.8. This section meets the requirements of 40 CFR 70.4(b)(12) by closely tracking the language of part 70.

(g) Enforcement provisions are discussed under Tab 5 of the submittal, Compliance Tracking and Enforcement Program. This section contains copies of the Enforcement Memorandum of Understanding, signed May 3, 1993. The AG Opinion discussed in section 1 above, outlines the State's authority to enforce all aspects of the program. Under Tab 9 of the submittal, the State provides a commitment to submit annual information concerning the State's enforcement activities. These submission elements meet the requirements of 40 CFR 70.4(b)(4)(ii) and (5).

The State of Arkansas has the authority to issue a variance from requirements imposed by State law under Arkansas Code, Annotated (A.C.A.) 8–4–313. The EPA regards this provision as wholly external to the program submitted for approval under part 70, and consequently is proposing to take no action on this provision of State law. The EPA has no authority to approve provisions of State law, such as the variance provision referred to, which are inconsistent with the CAA. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through the procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based." The State provides a legal position on variances in the AG Opinion, Section XXIII, page 9. Historically, Arkansas has not granted a variance without approval from EPA. Counsel for the ADPCE commits to assure that variances are not granted to part 70 sources.

The Arkansas operating permits program is contained in Regulation 26, but several applicable requirements are found in Regulation 19 (e.g. PSD requirements at 19.9). The State of Arkansas has submitted a revision to Regulation 19 and the EPA is currently undertaking a review of the revision. The EPA will continue to work closely with the State to ensure consistency between the SIP permits system and operating permits systems in Arkansas. The EPA reserves comment on the SIP revision until such time as review is completed. A subsequent notice will be published in the **Federal Register** when the review is complete.

3. Permit Fee Demonstration

The State provided a detailed workload analysis and permit fee demonstration to justify the fee of $16 per ton per year. Federal guidance recommends a presumptive minimum fee of $25 per ton per year, based on 1989 dollars and adjusted annually by the Consumer Price Index (CPI). The fee will be applied to the allowable emissions at each part 70 source. Approximately $4.16 million dollars per year is expected to be generated by the Arkansas fee. This figure is based on the emissions inventory and does not include hazardous air pollutant (HAP) emission sources. Program costs are expected to run approximately $3.6 million dollars per year. The State utilized historical information concerning permitting costs and the emissions inventory to estimate the revenue required to fund the program. The EPA noted that the fee demonstration does not estimate resource needs for section 112 programs that will be promulgated in the near future. Expansion of the State program is anticipated to facilitate incorporation of these new requirements. The ADPCE has the authority to adjust the fee as necessary using the State administrative procedures as new applicable requirements are promulgated. The fee demonstration submitted by Arkansas meets the requirements at 40 CFR 70.4(b)(7) and (8).

4. Provisions Implementing the Requirements of Other Titles of the Act

The State of Arkansas acknowledges that its request for approval of a part 70 program is also a request for approval of a program for delegation of unchanged section 112 standards under the authority of section 112(l) as they apply to part 70 sources. Upon receiving approval under section 112(l), the State may receive delegation of any new authority required by section 112 of the Act through the delegation process.

The State also has the option at any time to request, under section 112(l) of the Act, delegation of section 112 requirements in the form of State regulations which the State demonstrates are equivalent to the corresponding section 112 provisions promulgated by the EPA. At this time, the State plans to use the mechanism of incorporation by reference to adopt unchanged Federal section 112 requirements into its regulations.

The radionuclide NESHAP is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of "major" for radionuclide sources. Therefore, until a major source definition for radionuclides is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. The EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

Section 112(g) of the Act requires that, after the effective date of a permits program under title V, no person may construct, reconstruct or modify any major source of HAPs unless the State determines that the maximum achievable control technology emission limitation under section 112(g) will be met. Such determination must be made on a case-by-case basis where no applicable limitations have been established by the Administrator. During the period from the title V effective date to the date the State has taken appropriate action to implement the final section 112(g) rule (either adoption of the unchanged Federal rule or approval of an existing State rule under 112(l)), Arkansas intends to implement section 112(g) of the Act

through the State's preconstruction process.

The State of Arkansas commits to appropriately implementing and enforcing the existing and future requirements of sections 111, 112 and 129 of the Act, and all maximum achievable control technology (MACT) standards promulgated in the future, in a timely manner.

The submittal was amended with a letter from J.B. Jones, Chief of the Air Division, ADPCE, to Gerald Fontenot, Chief of the Air Programs Branch, EPA, dated January 13, 1994. This letter commits the ADPCE to meet the January 1, 1995, deadline for incorporation and submittal of the Federal acid rain program into the State regulations.

5. Enforcement Provisions

The Arkansas operating permits program submittal addressed the enforcement requirements under Tab 5 of the submittal. This section contains, as required at 40 CFR 70.4(b)(4)(ii) and 70.4 (b)(5), the Enforcement Memorandum of Understanding, signed by the State and the EPA on May 3, 1993. This information serves to describe the current processes in place to track air permits and conduct enforcement actions. The State has committed to use the AIRS computer tracking system in the operating permits program. Under Tab 9 of the submittal, the State committed to annual submission of information concerning the State's enforcement activities. This submission, as required at 40 CFR 70.4(b)(9), includes the number of enforcement actions either commenced or concluded; the penalties, fines, and sentences obtained in those actions; and the number of administrative orders issued. The AG's Opinion under Tab 3 of the submittal clearly documents the State's authority to issue, inspect, and enforce operating permits in both civil and criminal actions. This statement of authority is required at 40 CFR 70.4(b)(3)(vii).

6. Technical Support Document

The results of this review will be shown in a document entitled "Technical Support Document," which will be available in the docket at the locations noted above. The technical support documentation shows that all operating permits program requirements of 40 CFR part 70 and relevant guidance were met by the submittal with the exception of those requirements described below.

7. Summary

The State of Arkansas submitted to the EPA, under a cover letter from the Governor, the State's operating permits program on November 9, 1993. The submittal has adequately addressed all sixteen elements required for full approval as discussed in part 70 with the exception of the issues described in section B below. The State of Arkansas addressed appropriately all requirements necessary to receive interim approval of the State operating permits program pursuant to title V of the Act, 1990 Amendments and 40 CFR part 70. The EPA is proposing interim approval for the operating permits program submittal for the State of Arkansas.

B. Options for Approval/Disapproval and Implications

The EPA is proposing to grant interim approval to the operating permits program submitted by the State of Arkansas on November 9, 1993. Interim approvals under section 502(g) of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. If promulgated, the State must make the following changes to receive full approval:

(1) *PSD Applicability.* As discussed in section A.2.a above, the provisions at Regulation 26.3(a)(3) should incorporate by reference the PSD requirements in the State regulations applicable to new construction and modification.

(2) *Incorporation by Reference.* As discussed in section A.2.b and A.2.e above, the State must formally incorporate the part 70 provisions referenced in Regulation 26 regarding complete application requirements and permit content requirements.

(3) *Minor Modification Procedures.* As discussed in section A.2.d above, the State must remove or revise the language at Regulation 26.10(b)(1).

(4) *Definition of "prompt".* As discussed in section A.2.e above, the State must define "prompt" with regard to reporting deviations in order to be consistent with the rule at 40 CFR 70.6(a)(3)(iii)(B).

(5) *Submission of Regulation 19.* As discussed in section A.2 above, The State of Arkansas must ensure consistency between the operating permits program, Regulation 26, and the SIP, Regulation 19.

Evidence of these regulatory revisions and their procedurally correct adoption must be submitted to EPA within 18 months of EPA's approval of the Arkansas operating permits program. This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, the State is protected from sanctions for failure to have a program, and the EPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to 40 CFR part 70, and the one year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three year time period for processing the initial permit applications.

If the interim approval is converted to a disapproval, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, the EPA's disapproval of the submittal does not impose a new Federal requirement. Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) approval requirements for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under 40 CFR part 70.

III. Proposed Rulemaking Action

In this action, EPA is proposing interim approval of the operating permits program submitted by the State of Arkansas. The program was submitted by the State to EPA for the purpose of complying with Federal requirements found at the 1990 Amendments, title V and at part 70, which mandates that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and certain other sources, with the exception of Indian Lands. Therefore, the EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

EPA has reviewed this submittal of the Arkansas operating permits program and is proposing interim approval. Certain defects in the State's regulations preclude EPA from granting full approval of the State's operating permits program at this time. EPA is proposing to grant interim approval, subject to the State obtaining the needed regulatory revisions within 18 months after the Administrator's approval of the Arkansas title V program pursuant to 40 CFR 70.4.

IV. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed rule. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, the EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process; and

(2) To serve as the record in case of judicial review.

The EPA will consider any comments received by October 19, 1994.

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

C. Regulatory Flexibility Act

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

Operating permits program approvals under section 502 of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal operating permits program approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA to base its actions concerning operating permits programs on such grounds, (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct 1976); 42 U.S.C. 7410(a)(2)).

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Operating permits.

Authority: 42 U.S.C. 7401–7671q.

Date: September 7, 1994.

Joe D. Winkle,

Acting Regional Administrator (6A).

[FR Doc. 94–23117 Filed 9–16–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 745

[OPPTS–62134B; FRL–4906–9]

Rin 2070–AC21

Lead Fishing Sinkers; Notice of Informal Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; informal hearing.

SUMMARY: On March 9, 1994, at 59 FR 11122, EPA published a proposed rule to prohibit the manufacturing, processing, and distribution in commerce in the United States of certain smaller fishing sinkers containing lead and zinc, alone or mixed with other substances, including those made of brass. In that notice, the Agency stated that it would hold an informal hearing if persons requested time for oral comment. EPA has received requests for a hearing on the proposed rule and will hold a 2–day public hearing.

DATES: The hearing will take place on November 30 and December 1, 1994, from 10 a.m. until 4 p.m. Written requests to participate in the hearing, including written requests for a waiver to participate, must be received no later than November 9, 1994. Reply comments must be received on or before December 15, 1994.

ADDRESSES: The hearing will be held at the Omni Shoreham Hotel, 2500 Calvert St., NW., Washington, DC. Three copies of any request to participate in the informal hearing, identified with docket number OPPTS–62134B must be submitted to: TSCA Docket Receipt (7407), Office of Pollution Prevention and Toxics, Rm. E–G99, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Requests for a waiver to participate in the informal hearing by those organizations that did not file main comments must be sent to EPA Headquarters Hearing Clerk, Mail Code 1900, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E–G99, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: The procedures for rulemaking under section 6 of the Toxic Substances Control Act (TSCA) are identified in 40 CFR part 750, subpart A. The following summarizes the procedures and logistics associated with this informal hearing pursuant to 40 CFR part 750. Participants and/or commenters are advised to see 40 CFR part 750 for greater detail.

Each person or organization desiring to participate in the informal hearing shall file a written request to participate with the OPPT Document Control Officer, TSCA Docket Receipts, Office of Pollution Prevention and Toxics, Rm. E–G99, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. The request must be received by the Agency no later than November 9, 1994. The request shall include: (1) A brief statement of the interest of the person or organization in the proceeding; (2) a brief outline of the points to be addressed; (3) an estimate of the time required; and (4) if the request comes from an organization, a non-binding list of the persons to take part in the presentation. Organizations are requested to bring with them, to the extent possible, employees with individual expertise in and responsibility for each of the areas to be addressed. An organization that has not filed main comments on the rulemaking will not be allowed to participate in the hearing, unless a waiver of this requirement is granted in writing by the Record and Hearing Clerk or the organization is appearing at the request of EPA or under subpoena (40 CFR 750.6(a)).

A panel of EPA employees shall preside at the hearing, and one panel member will chair the proceedings. The panel may question any individual or group participating in the hearing on any subject relating to the rulemaking. Opening statements should be brief and restricted to points that could not have been made in main comments, or to emphasize points which are made in main comments, but which the participant believes can be more forcefully urged in the hearing context. Persons in the hearing audience may submit questions in writing for the hearing panel to ask the participants, and the hearing panel may, at their

discretion, ask these questions (40 CFR 750.7(a) and (b)). See 40 CFR 750.7(c) for the rule governing the submission of additional material by the hearing participants.

After the close of the hearing, any participant in the hearing may submit a written request for cross-examination. The request shall be received by EPA no later than 1 week after a full transcript of the hearing becomes available (to determine when the transcript is available, interested persons should call the number listed under **FOR FURTHER INFORMATION CONTACT**). See 40 CFR 750.8(a) for a description of the information that shall be included in such a request.

Interested persons may file reply comments. Reply comments shall be received on or before December 15, 1994, and shall be restricted to comments on: (1) Other comments; (2) material in the hearing record; and (3) material which was not available to the commenting party within a sufficient amount of time before main comments were due on July 8, 1994 (40 CFR 750.4(b)). Extensions of time for filing reply comments may be granted pursuant to 40 CFR 750.4(c). Reply comments and a transcript of the hearing will be placed in the TSCA Nonconfidential Information Center as part of the rulemaking record for the proposed rule (docket number OPPTS-62134) and will be available for inspection and copying (see TSCA Docket Receipt Office listed under ADDRESSES). Any information claimed as Confidential Business Information (CBI) that is part of the record for this rulemaking is not available for public review. A public version of the record, from which information claimed as CBI has been excluded, is available for inspection.

List of Subjects in 40 CFR Part 745

Environmental protection, Hazardous substances, Lead, Recordkeeping and notification requirements.

Dated: September 12, 1994.

Mark Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 94–23116 Filed 9–16–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 940953–4253; I.D. 081594A]

RIN 0648–AE52

Snapper-Grouper Fishery Off the Southern Atlantic States

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues this proposed rule to implement Amendment 7 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). This rule would change the minimum size limits of certain species, require charter vessels/headboats and dealers to obtain Federal permits, clarify one of the earned income requirements for a vessel permit, restrict the sale/purchase of snapper-grouper species, modify the criteria for determining when a vessel is operating as a headboat, modify the requirements for possessing multi-day bag limits, specify allowable gear, authorize permits for experimental fishing, and modify the management unit for scup. In addition, NMFS proposes changes to correct and clarify certain regulations, or conform them to current standards. The intended effects of this rule are to conserve snapper-grouper species and enhance effective management of the snapper-grouper fishery.

DATES: Written comments must be received on or before October 31, 1994.

ADDRESSES: Comments on the proposed rule must be sent to Peter J. Eldridge, Southeast Regional Office, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702.

Requests for copies of Amendment 7, which includes a regulatory impact review and an environmental assessment, should be sent to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; FAX 803–769–4520.

Comments regarding the collection-of-information requirements contained in this proposed rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–570–5305.

SUPPLEMENTARY INFORMATION: Snapper-grouper species off the southern Atlantic states are managed under the FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council), and is implemented through regulations at 50 CFR part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Background

Recent scientific stock assessments and public testimony have identified a number of snapper-grouper species as being overfished. The management measures in Amendment 7 are designed to prevent this overfishing, rebuild the overfished species, and manage the fishery in a more orderly manner.

Size Limits for Hogfish and Mutton Snapper

Amendment 7 would establish a minimum size limit of 12 inches (30.5 cm), fork length, for hogfish and increase the minimum size limit for mutton snapper from 12 inches (30.5 cm) to 16 inches (40.6 cm), total length. The proposed 12-inch (30.5-cm) minimum size limit for hogfish is based on the minimum size/age at which hogfish transform from female to male. The proposed 16-inch (40.6-cm) minimum size limit for mutton snapper corresponds to the size/age of sexual maturity. Sex transformation of hogfish and sexual maturity for mutton snapper are essential to prevent overfishing and maintain the productivity of these species. In addition, the proposed minimum size limits would increase yield-per-recruit for each species.

Annual Charter Vessel and Headboat Permits

Amendment 7 would require a vessel that operates as a charter vessel or headboat in the snapper-grouper fishery in the exclusive economic zone (EEZ), or that possesses fish in the snapper-grouper fishery in or from the EEZ while so operating, to have on board a charter vessel/headboat permit for such fishery. Charter vessels and headboats catch substantial quantities of snapper-grouper species, and it is essential that these landings be documented for assessment purposes. A permit system would provide a census for this sector of the fishery.

Annual Dealer Permits

Amendment 7 would require a dealer to obtain a permit in order to receive snapper-grouper species, excluding wreckfish, that are harvested in the EEZ.

Currently, a permit is required for a dealer to receive wreckfish. To be eligible for a dealer permit for snapper-grouper, excluding wreckfish, an applicant would have to have a valid state wholesaler's license in the state where he or she operates and a physical facility for the receipt of fish at a fixed location in that state. Dealer permits for snapper-grouper, excluding wreckfish, would (1) Improve quota monitoring by providing a census of snapper-grouper dealers, (2) enhance the enforceability of commercial trip limits for snowy grouper and golden tilefish, and (3) aid in verifying required fishing vessel logbook submissions.

Earned Income Requirement for Commercial Permits

Amendment 7 proposes to clarify the gross-sales-of-fish alternative requirement for a vessel permit for snapper-grouper, excluding wreckfish. Currently, an applicant may show gross sales of fish exceeding $20,000 during 1 of the 3 years preceding the application. Under Amendment 7, such sales would have to be of fish harvested by the applicant for the permit. The Council is concerned that some vessel owners may have obtained permits through the artifice of purchasing and reselling fish harvested by others. Such practice does not meet the Council's intent for qualifying for a permit. In FMP Amendment 4, the Council clearly stated that the income and gross sales requirements are intended to allow those who are committed to commercial fishing, in terms of capital investment or earned income, to continue making their livelihood from fishing. Specifically, the Council intends that the commercial fishing permits be for those vessels whose owners or operators have a history of income from harvesting and selling fish.

Restrictions on Sale/Purchase of Snapper-Grouper

Amendment 7 proposes requirements that snapper-grouper species, excluding wreckfish, harvested in the EEZ (1) Be sold only to a dealer with a valid permit for snapper-grouper, excluding wreckfish; and (2) be purchased only from a vessel that has a valid permit for snapper-grouper, excluding wreckfish, or from a person with a valid state commercial license to sell fish. In addition, sale/purchase of such fish would be limited to the bag limit amounts unless sale/purchase involved snapper-grouper harvested by a vessel with a valid permit for snapper-grouper, excluding wreckfish. These measures would improve fishery statistics that will be used in assessments of the biological condition of snapper-grouper species. The improved data base will also allow scientists to estimate more accurately the social and economic value of various fishing sectors. Economic and social analyses based on fishery statistics allow managers to evaluate the effectiveness of management measures.

Headboat Crew Specification

The current regulations specify that, if a headboat has a vessel permit for snapper-grouper, excluding wreckfish, it is considered to be operating as a headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew. When operating as a headboat, the bag limits apply. Amendment 7 proposes to remove the specification of three persons aboard and, in its place, allow the number of persons aboard to be up to the number of crew specified in the vessel's Certificate of Inspection. This measure would, in some cases, allow a permitted headboat to be exempt from the bag limits when it has more than three persons aboard. The Council believes that the number of crew specified on the Certificate of Inspection would allow safer operation of the vessel when fishing and, to the extent that the number of crew allowed exceeds three, should improve the economic efficiency of affected headboats if they operate as commercial fishing vessels.

Possession Limits

A current criterion for the possession aboard a charter vessel or headboat of multi-day bag limits is that the vessel have two licensed operators aboard. Amendment 7 would delete this criterion. The Council believes the two-licensed operators aboard criterion has no reasonable biological or management correlation with multi-day bag limits. NMFS believes that this action should have little impact on the fishery, notwithstanding the Council's indication in Amendment 7 that this measure possibly may decrease income to operators/owners of charter vessels and headboats.

Gear Limitations

Under Amendment 7, the only gear authorized in a directed fishery for snapper-grouper species would be vertical hook-and-line gear, including hand-held rods and rods attached to a vessel (bandit gear), in either case, with manual, electric, or hydraulic reels; spearfishing gear; bottom longlines; and sea bass pots. All other gear would be prohibited. Limits would be imposed on the possession and transfer of snapper-grouper species by vessels with unauthorized gear aboard. An exception to the possession limits would apply in the case of a permitted vessel that fishes in the EEZ off North Carolina with a sink net aboard.

In addition, the use of bottom longlines to fish for snapper-grouper species in the EEZ south of St. Lucie Inlet, FL, would be prohibited; the use of powerheads to harvest snapper-grouper species in the EEZ off South Carolina would be prohibited; and the use of rebreathers to harvest snapper-grouper species with spearfishing gear in the EEZ off the southern Atlantic states would be prohibited.

The concept of allowable gear allows managers to regulate the fishery more efficiently by enabling managers to test gear before it becomes widespread. This concept would enhance law enforcement by establishing standard gear. Environmental damage to the habitat would be minimized because gear would have to be evaluated before it could be used. Testing of experimental gear would minimize the possibility that very efficient gear could cause recruitment failure of the snapper grouper resource if it were allowed to be used throughout the fishery.

The exception applicable to the use of sink nets off North Carolina would allow fishermen in that area to operate with multiple gears on a trip, that is, it would allow retention of snapper-grouper harvested with sea bass pots and/or vertical hook-and-line gear and fish harvested with a sink net. A sink net has virtually no bycatch of snapper-grouper species and is continuously tended, which minimizes the possibility of lost gear and ghost fishing. Therefore, the Council believes that sink nets, as used off North Carolina, do not pose the problems to the snapper-grouper fishery normally associated with entanglement nets. This exception would improve the economic efficiency of fishermen in North Carolina who are accustomed to using sink nets and authorized gear on a trip.

The Council is proposing to ban the use of bottom longlines to fish for snapper-grouper species south of St. Lucie, FL, to increase the standing stock of tilefish in that area. The Council believes that the prohibition of bottom longlines will decrease fishing mortality on tilefish; hence, it should aid in the prevention of growth and recruitment overfishing. Also, the Council believes that banning bottom longline gear will reduce competition among traditional bandit gear commercial fishermen, recreational anglers, and longline fishermen and will result in reduced habitat damage. The Council noted that

the continental shelf edge is quite narrow south of St. Lucie Inlet, and does not want a bottom longline fishery to develop that would lead to conflict among the competing user groups in that area.

South Carolina prohibits the use of powerheads in its waters, and powerheads cannot be used in the special management zones in the EEZ off South Carolina. The Council's proposed ban on the use of powerheads in the entire EEZ off South Carolina is intended to enhance enforceability of the prohibition of powerheads in State waters. This measure would result in consistent State and Federal regulations off South Carolina. The Council also believes that the ban on use of powerheads in the EEZ would reduce conflict between recreational and commercial divers that appears to be a particular problem in the EEZ off South Carolina.

The Council believes that the use of rebreathers significantly increases the efficiency of divers using spearfishing gear. The use of rebreathers eliminates bubbles, thus allowing divers to stalk fish more easily. The Council is concerned about the status of gag, which are particularly vulnerable to divers when they aggregate to spawn. The prohibition of rebreathers would lessen fishing mortality on the spawning aggregations, which will assist in prevention of recruitment overfishing. Amberjack are also targeted by divers during spawning periods, and this measure would also reduce fishing mortality on that species and lessen the chance of recruitment overfishing.

Experimental Fishing

Under Amendment 7, the Director, Southeast Region, NMFS, (Regional Director) would be authorized to issue permits for experimental fishing, provided that, as a condition of such permits, data on the gear used and fish caught in such experimental fishing must be maintained and provided to the Science and Research Director. Experimental fishing would provide an opportunity to test new gear for possible authorization for use in the snapper-grouper fishery.

Management Unit for Scup

Amendment 7 proposes to modify the management unit for scup, *Stenotomus chrysops*, so that management under the FMP would apply only south of Cape Hatteras. Scup are found from the North/South Carolina border to the U.S.-Canada border with a division of stocks at Cape Hatteras. The northern stock of scup is overfished and the Mid-Atlantic Fishery Management Council is considering measures to rebuild that stock. The proposed modification of the management unit would allow the Mid-Atlantic Council to manage the northern stock of scup throughout its range. This is a conservation measure that would result in more efficient management of this resource.

Comments Requested

While NMFS is inviting comments on all of the measures in Amendment 7, comments are specifically invited on the following concerns about provisions of the allowable gear measure. (1) What are the effects of prohibiting the use of bottom longlines south of St. Lucie Inlet, FL ? (2) What are the effects of prohibiting the use of powerheads in the EEZ off South Carolina?

Additional Measures in Amendment 7

In addition to the measures in this rule, discussed above, Amendment 7 would add localized depletion to the FMP's list of problems in the snapper-grouper fishery. It would add FMP objectives to evaluate and minimize localized depletion and modify the framework procedure for implementing or adjusting certain management measures to allow the Council to react more quickly to changing resource conditions. The proposed change to the framework procedure would allow the Council to initiate and implement necessary changes at any time during the fishing year instead of only prior to each fishing year. Revision of 50 CFR part 646 is not required to effect these changes.

Background and rationale for the additional measures in Amendment 7, and for the measures in this rule, discussed above, are contained in Amendment 7, the availability of which was announced in the **Federal Register** (59 FR 42570, August 18, 1994).

Additional Measures Proposed by NMFS

NMFS proposes to change the title of part 646 to "Snapper-Grouper Fishery Off the Southern Atlantic States," with concomitant changes of the language in the codified text, to more correctly indicate the geographical scope of the regulations.

The address in the definition of "Regional Director" would be changed to reflect a recent move.

The requirement that an applicant for a dealer permit for wreckfish must have a physical facility at a fixed location would be changed to clarify that such facility must be for the receipt of fish, rather than merely a mailing address.

Classification

Section 304(a)(1)(D) of the Magnuson Act requires NMFS to publish regulations proposed by a Council within 15 days of receipt of the amendment and regulations. At this time, NMFS has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This action has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities because neither gross revenues nor compliance costs would be significantly changed. All participants in the fishery are small entities. As a result, a regulatory flexibility analysis was not prepared.

This rule contains three collection-of-information requirements subject to the Paperwork Reduction Act—namely, applications for charter vessel/headboat permits, applications for dealer permits, and applications for experimental fishing permits. These requirements have been submitted to the Office of Management and Budget (OMB) for approval. The public reporting burdens for these collections of information are estimated to average 20 minutes, 5 minutes, and 1 hour per response, respectively, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding these reporting burden estimates or any other aspect of these collections of information, including suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 13, 1994.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 646 is proposed to be amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OFF THE SOUTHERN ATLANTIC STATES

1. The authority citation for part 646 continues to read as follows:

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

PART 646—[AMENDED]

2. The title of part 646 is revised to read "Snapper-Grouper Fishery Off the Southern Atlantic States".

3. In § 646.1, in paragraph (a) add the word "Region" after the phrase "Snapper-Grouper Fishery of the South Atlantic"; paragraph (b) is revised; and new paragraph (c) is added to read as follows:

§ 646.1 Purpose and scope.

* * * * *

(b) This part governs conservation and management of fish in the snapper-grouper fishery in or from the EEZ off the southern Atlantic states, except that—

(1) Sections 646.5 and 646.24 also apply to such fish in or from adjoining state waters; and

(2) This part does not apply to scup north of 35°15.3′ N. lat., the lat. of Cape Hatteras Light, NC.

(c) EEZ in this part 646 refers to the EEZ off the southern Atlantic states, unless the context clearly indicates otherwise.

4. In § 646.2, the definition of "South Atlantic" is removed; the definitions of "Charter vessel," "Headboat," and "Regional Director" are revised; and new definitions of "Off North Carolina," "Off South Carolina," and "Off the southern Atlantic states" are added, in alphabetical order, to read as follows:

§ 646.2 Definitions.

* * * * *

Charter vessel means a vessel less than 100 gross tons (90.8 metric tons) that meets the requirements of the Coast Guard to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year. A charter vessel is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

* * * * *

Headboat means a vessel that holds a valid Certificate of Inspection issued by the Coast Guard to carry passengers for hire. A headboat is considered to be operating as a headboat when it carries a passenger who pays a fee or when there are more persons aboard than the number of crew specified in the vessel's Certificate of Inspection.

Off North Carolina means the waters off the east coast from 36°34′55″ N. lat. (extension of the boundary between Virginia and North Carolina) to a line extending in a direction of 135°34′55″ from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33°51′07.9″ N. lat., 78°32′32.6″ W. long.

Off South Carolina means the waters off the east coast from a line extending in a direction of 135°34′55″ from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33°51′07.9″ N. lat., 78°32′32.6″ W. long. to a line extending in a direction of 104° from true north from the seaward terminus of the South Carolina/Georgia boundary.

Off the southern Atlantic states means the waters off the east coast from 36°34′55″ N. lat. (extension of the boundary between Virginia and North Carolina) to the boundary between the Atlantic Ocean and the Gulf of Mexico, as specified in § 601.11(c) of this chapter.

* * * * *

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702, telephone 813–570–5301; or a designee.

* * * * *

5. In § 646.4, paragraphs (e) through (m) are redesignated as paragraphs (f) through (n), respectively; paragraphs (a)(3), (b)(2)(vii)(B), (b)(2)(vii)(C), (d), the first sentences of newly designated paragraphs (f), (g)(1), (i)(1), and (i)(2), newly designated paragraph (j), and the first sentence of newly redesignated paragraph (n) are revised; and new paragraphs (a)(4), (a)(5), and (e) are added to read as follows:

§ 646.4 Permits and fees.

(a) * * *

(3) *Annual charter vessel/headboat permits for snapper-grouper.* A vessel that is operating as a charter vessel or headboat that fishes for fish in the snapper-grouper fishery in the EEZ, or possesses fish in the snapper-grouper fishery in or from the EEZ, must have on board a charter vessel/headboat permit for the snapper-grouper fishery.

(4) *Annual dealer permits for snapper-grouper, excluding wreckfish.* A dealer who receives fish in the snapper-grouper fishery, excluding wreckfish, that were harvested in the EEZ must obtain an annual dealer permit for snapper-grouper, excluding wreckfish. To be eligible for such permit, an applicant must have a valid state wholesaler's license in the state where he or she operates and must have a physical facility for the receipt of fish at a fixed location in that state.

(5) *Annual dealer permits for wreckfish.* A dealer who receives a wreckfish must obtain an annual dealer permit for wreckfish. To be eligible for such permit, an applicant must have a valid state wholesaler's license in the state where he or she operates and must have a physical facility for the receipt of fish at a fixed location in that state.

(b) * * *

(2) * * *

(vii) * * *

(B) Gross sales of fish harvested by his or her vessels were more than $20,000; or

(C) For a vessel owned by a corporation or partnership, the gross sales of fish harvested by the corporation's or partnership's vessels were more than $20,000;

* * * * *

(d) *Application for a charter vessel/headboat permit for snapper-grouper.* (1) An application for a charter vessel/headboat permit for fish in the snapper-grouper fishery must be submitted and signed by the owner (in the case of a corporation, a qualifying officer or shareholder; in the case of a partnership, a qualifying general partner) or operator of the vessel. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) A permit applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of its state registration certificate.

(ii) The vessel's name and official number.

(iii) Name, mailing address, including zip code, and telephone number of the owner of the vessel.

(iv) Name, mailing address, including zip code, and telephone number of the applicant, if other than the owner.

(v) Social security number and date of birth of the applicant and the owner (if the owner is a corporation/partnership, the employer identification number, if one has been assigned by the Internal Revenue Service, and the date the corporation/partnership was formed).

(vi) Any other information concerning vessel, gear characteristics, principal fisheries engaged in, or fishing areas requested by the Regional Director and included on the application form.

(vii) Any other information that may be necessary for the issuance or

administration of the permit, as requested by the Regional Director and included on the application form.

(e) *Application for an annual dealer permit.* (1) An application for a dealer permit for snapper-grouper, excluding wreckfish, or for a dealer permit for wreckfish must be submitted and signed by the dealer or an officer of a corporation acting as a dealer. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) A permit applicant must provide the following information:

(i) A copy of each state wholesaler's license held by the dealer.

(ii) Business name; mailing address, including zip code, of the principal office of the business; telephone number; employer identification number, if one has been assigned by the Internal Revenue Service; and date the business was formed.

(iii) The address of each physical facility at a fixed location where the business receives fish.

(iv) Applicant's name; official capacity in the business; address, including zip code; telephone number; social security number; and date of birth.

(v) Any other information that may be necessary for the issuance or administration of the permit, as requested by the Regional Director and included on the application form.

(f) * * * A fee is charged for each permit application submitted pursuant to this section and for each sea bass pot identification tag required under § 646.6(d). * * *

(g) * * *

(1) The Regional Director will issue a permit at any time to an applicant if the application is complete and the specific requirements for the requested permit have been met. * * *

* * * * *

(i) * * *

(1) A vessel permit issued pursuant to this section is not transferable or assignable. * * *

(2) A dealer permit issued pursuant to this section may be transferred upon sale of the dealer's business. * * *

(j) *Display.* A vessel permit issued pursuant to this section must be carried on board the vessel and such vessel must be identified as provided for in § 646.6. A dealer permit issued pursuant to this section must be available on the dealer's premises. The operator of a vessel or a dealer must present the permit for inspection upon request of an authorized officer.

* * * * *

(n) * * * The owner or operator of a vessel with a permit for snapper-grouper, excluding wreckfish; the wreckfish shareholder of a vessel with a permit for wreckfish; the owner or operator of a vessel with a charter vessel/headboat permit for snapper-grouper; or a dealer with a permit issued pursuant to this section must notify the Regional Director within 15 days after any change in the application information required by paragraph (b), (c), (d), or (e) of this section. * * *

§ 646.5 [Amended]

6. In § 646.5, in paragraphs (b) and (c)(1), the phrase "off the South Atlantic states" is removed.

7. In § 646.7, paragraph (dd) is removed; paragraphs (g) through (cc) are redesignated as paragraphs (h) through (dd), respectively; paragraphs (ll) through (ss) are redesignated as paragraphs (pp) through (ww), respectively; paragraphs (jj) and (kk) are redesignated as paragraphs (kk) and (ll), respectively; in newly designated paragraph (pp), the reference to "§ 646.26" is revised to read "§ 646.27"; in newly designated paragraph (qq), the reference to "§ 646.26" is revised to read "§ 646.27"; paragraphs (c) through (f) and (ee) through (ii) are revised; and new paragraphs (g), (jj), and (mm) through (oo) are added to read as follows:

§ 646.7 Prohibitions.

* * * * *

(c) Own or operate a vessel that operates as a charter vessel or headboat that fishes for snapper-grouper species in the EEZ, or possesses snapper-grouper species in or from the EEZ, without a charter vessel/headboat permit on board, as specified in § 646.4(a)(3).

(d) As a dealer, receive fish in the snapper-grouper fishery without a dealer permit, as specified in § 646.4(a)(4) or (a)(5).

(e) Falsify information specified in § 646.4(b)(2), (c)(2), (d)(2), or (e)(2) on an application for a permit.

(f) Fail to display a permit, as specified in § 646.4(j).

(g) Falsify or fail to maintain, submit, or provide information required to be maintained, submitted, or provided, as specified in § 646.5 (a) through (d), or as may be required by § 646.29.

* * * * *

(ee) Use a longline to fish for fish in the snapper-grouper fishery in the EEZ south of 27°10′ N. lat., in the EEZ north of 27°10′ N. lat. where the charted depth is less than 50 fathoms (91.4 m), or without a vessel permit for snapper-grouper, excluding wreckfish, on board; or, aboard a vessel with a longline on board that fishes on a trip in the EEZ south of 27°10′ N. lat., in the EEZ north of 27°10′ N. lat. where the charted depth is less than 50 fathoms (91.4 m), or without such vessel permit on board, possess fish in the snapper-grouper fishery exceeding the limits, as specified in § 646.22(d)(1)(ii).

(ff) Fish for wreckfish with a bottom longline, or possess a wreckfish aboard a vessel that has a longline aboard, as specified in § 646.22(d)(2).

(gg) In the EEZ off South Carolina, harvest fish in the snapper-grouper fishery with a powerhead, as specified in § 646.22(e).

(hh) Harvest fish in the snapper-grouper fishery with spearfishing gear while using a rebreather, as specified in § 646.22(f).

(ii) Use unauthorized gear in a directed fishery for snapper-grouper or exceed the possession limits for snapper-grouper species when unauthorized gear is aboard, as specified in § 646.22(g)(2) (i) and (ii).

(jj) Transfer at sea any fish in the snapper-grouper fishery from a vessel with unauthorized gear aboard to another vessel, or receive at sea any such fish, as specified in § 646.22(g)(2) (iii) and (iv).

* * * * *

(mm) Sell, trade, or barter or attempt to sell, trade, or barter snapper-grouper species, excluding wreckfish, harvested in the EEZ to a dealer who does not have a permit, as specified in § 646.26(a).

(nn) Purchase, trade, or barter or attempt to purchase, trade, or barter snapper-grouper species, excluding wreckfish, harvested in the EEZ unless the harvesting vessel has a permit for snapper-grouper, excluding wreckfish, or the seller has a commercial license to sell fish, as specified in § 646.26(b).

(oo) Except for snapper-grouper species harvested by a vessel for which a permit for snapper-grouper, excluding wreckfish, has been issued, sell, purchase, trade, or barter or attempt to sell, purchase, trade, or barter snapper-grouper species, excluding wreckfish, harvested in the EEZ in excess of the bag limits, as specified in § 646.26(c).

* * * * *

8. In § 646.21, paragraphs (a)(1)(iv), (a)(1)(v), and (a)(1)(vi) are redesignated as paragraphs (a)(1)(v), (a)(1)(vii), and (a)(1)(viii), respectively; paragraph (a)(1)(iii) is revised; and new paragraphs (a)(1)(iv) and (a)(1)(vi) are added to read as follows:

§ 646.21 Harvest limitations.

(a) * * *

(1) * * *

(iii) Blackfin, cubera, dog, gray, mahogany, queen, schoolmaster, silk, and yellowtail snappers; and red porgy—12 inches (30.5 cm), total length.

(iv) Hogfish—12 inches (30.5 cm), fork length.

* * * * *

(vi) Mutton snapper—16 inches (40.6 cm), total length.

* * * * *

9. In § 646.22, paragraphs (d), (e), and (f) are removed; paragraph (g) is redesignated as paragraph (d); in newly designated paragraph (d)(1)(iii), the reference to "paragraph (g)(1)" is revised to read "paragraph (d)(1)(ii)"; newly designated paragraphs (d)(1)(i) and (d)(1)(ii) introductory text are revised; and new paragraphs (e), (f), (g), and (h) are added to read as follows:

§ 646.22 Gear restrictions.

* * * * *

(d) * * *

(1) * * *

(i) A longline may not be used to fish for fish in the snapper-grouper fishery in the EEZ—

(A) South of 27°10′ N. lat. (due east of the entrance to St. Lucie Inlet, FL);

(B) North of 27°10′ N. lat. where the charted depth is less than 50 fathoms (91.4 m), as shown on the latest edition of the largest scale NOAA chart of the location; or

(C) Without a permit for snapper-grouper, excluding wreckfish, on board.

(ii) A person aboard a vessel with a longline on board that fishes on a trip in the EEZ south of 27°10′ N. lat., north of 27°10′ N. lat. where the charted depth is less than 50 fathoms (91.4 m), or without a permit for snapper-grouper, excluding wreckfish, on board, is limited on that trip to:

* * * * *

(e) *Powerheads off South Carolina.* In the EEZ off South Carolina, a powerhead may not be used to harvest fish in the snapper-grouper fishery. The possession of a mutilated fish in the snapper-grouper fishery in or from the EEZ off South Carolina and a powerhead is *prima facie* evidence that such fish was harvested by a powerhead.

(f) *Rebreathers and spearfishing gear.* In the EEZ, a person using a rebreather may not harvest fish in the snapper-grouper fishery with spearfishing gear. The possession of a fish in the snapper-grouper fishery while in the water with a rebreather is *prima facie* evidence that such fish was harvested with spearfishing gear while using a rebreather.

(g) *Authorized and unauthorized gear.*—(1) *Authorized gear.* Subject to the specific gear limitations in paragraphs (a) through (f) of this section and in § 646.26, the following are the only gear types authorized in a directed fishery for snapper-grouper in the EEZ:

(i) Vertical hook-and-line gear, including hand-held rods and rods attached to a vessel ("bandit" gear), in either case, with manual, electric, or hydraulic reels;

(ii) Spearfishing gear;

iii) Bottom longlines; and

(iv) Sea bass pots.

(2) *Unauthorized gear.* All gear types other than those listed in paragraph (g)(1) of this section are unauthorized gear and the following possession and transfer limitations apply:

(i) A vessel with trawl gear aboard that fishes in the EEZ on a trip may possess no more than 200 lb (90.7 kg) of fish in the snapper-grouper fishery, excluding wreckfish, in or from the EEZ on that trip. It is a rebuttable presumption that a vessel with more than 200 lb (90.7 kg) of fish in the snapper-grouper fishery, excluding wreckfish, aboard harvested such fish in the EEZ.

(ii) Except as specified in paragraph (h) of this section, a person aboard a vessel with unauthorized gear aboard, other than trawl gear, that fishes in the EEZ on a trip is limited on that trip to:

(A) Species for which a bag limit is specified in § 646.23(b)—the bag limit; and

(B) All other species in the snapper-grouper fishery—zero.

(iii) A vessel with unauthorized gear aboard may not transfer at sea any fish in the snapper-grouper fishery—

(A) Taken in the EEZ, regardless of where the transfer takes place; or

(B) In the EEZ, regardless of where such fish were taken.

(iv) No vessel may receive at sea any fish in the snapper-grouper fishery from a vessel with unauthorized gear aboard, as specified in paragraph (g)(2)(iii) of this section.

(h) *Use of sink nets off North Carolina.* A vessel that has on board a permit for snapper-grouper, excluding wreckfish, that fishes in the EEZ off North Carolina on a trip with a sink net aboard, may retain otherwise legal fish in the snapper-grouper fishery taken on that trip with vertical hook-and-line gear or sea bass pots. For the purpose of this paragraph (h), a sink net—

(i) Is a flat net, designed to be suspended vertically in the water to entangle the head or body parts of fish that attempt to pass through the meshes;

(ii) Has stretched mesh measurements of 3 to 4¾ inches (7.6 to 12.1 cm); and

(iii) Is attached to the vessel when deployed.

10. In § 646.23, paragraphs (a)(2) and (a)(3) are removed; paragraph (a)(4) is redesignated as paragraph (a)(3); new paragraph (a)(2) is added; and paragraph (c)(2) introductory text is revised to read as follows:

§ 646.23 Bag and possession limits.

(a) * * *

(2) Special limitations on possession and transfer of fish in the snapper-grouper fishery apply to a person fishing with unauthorized gear in the EEZ. See § 646.22(g)(2).

* * * * *

(c) * * *

(2) Provided each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the duration of the trip—

* * * * *

§§ 646.26, 646.27, and 646.28 [Redesignated as §§ 646.27 through 646.29]

11. Sections 646.26, 646.27, and 646.28 are redesignated as §§ 646.27, 646.28, and 646.29, respectively.

12. In subpart B, new § 646.26 is added to read as follows:

§ 646.26 Restrictions on sale/purchase.

Subject to the restrictions regarding sale/purchase of fish in the snapper-grouper fishery in § 646.21(a)(2), (g), and (j)(3), and § 646.25(f)—

(a) A person may sell, trade, or barter or attempt to sell, trade, or barter fish in the snapper-grouper fishery, excluding wreckfish, harvested in the EEZ, only to a dealer who has a valid permit for snapper-grouper, excluding wreckfish;

(b) A person may purchase, trade, or barter or attempt to purchase, trade, or barter fish in the snapper-grouper fishery, excluding wreckfish, harvested in the EEZ, only from a vessel for which a valid permit for snapper-grouper, excluding wreckfish, has been issued or from a person who has a valid commercial license to sell fish in the state where the purchase, trade, or barter or attempted purchase, trade, or barter occurs.

(c) Except for the sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of fish in the snapper-grouper fishery, excluding wreckfish, harvested in the EEZ by a vessel for which a valid permit for snapper-grouper, excluding wreckfish, has been issued, the sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of such fish is limited to the bag limits specified in § 646.23(b).

§ 646.28 [Amended]

13. In newly designated § 646.28, add the word Region" after the words "South Atlantic" and before the comma.

14. Newly designated § 646.29 is revised to read as follows:

§ 646.29 Specifically authorized activities.

The Regional Director may authorize, for the acquisition of information and data, activities that are otherwise prohibited by this part. In addition, the Regional Director may issue a permit for experimental fishing, provided that, as a condition of such permit, data on the gear used and fish caught in such experimental fishing must be maintained and provided to the Science and Research Director.

[FR Doc. 94–23111 Filed 9–15–94; 9:04 am]
BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 59, No. 180
Monday, September 19, 1994

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Processes

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of two meetings of the Committee on Governmental Processes of the Administrative Conference of the United States.

DATES: Friday, September 30, 1994, at 1:30 p.m. and Tuesday, October 25, 1994, at 2:00 p.m.

LOCATION: Office of the Chairman, Administrative Conference of the United States, suite 500, 2120 L Street, NW., Washington, DC. (Library, 5th Floor).

FOR FURTHER INFORMATION: Deborah S. Laufer, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC. Telephone: (202) 254–7020.

SUPPLEMENTARY INFORMATION: The Committee will meet to begin consideration of when federal government lawyers may participate in pro bono activities. There are possible restrictions in the Code of Professional Responsibility, in agency regulations governing outside activities, and in government-wide rules concerning use of government instrumentalities. The committee will start its discussion by reviewing a 1991 report on the subject written by consultant Professor Lisa Lerman of Catholic University School of Law.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should call the Office of the Chairman of the Administrative Conference at least one day before the meeting. The committee chair, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available upon request.

Dated: September 14, 1994

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 94–23194 Filed 9–16–94; 8:45 am]

BILLING CODE 6110–01–W

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94–090–1]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service during the month of July 1994. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the list.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine Kitto, Program Assistant, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245. For a copy of this month's list, or to be placed on the mailing list, write to Ms. Kitto at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month, the Veterinary Biologics section of Biotechnology, Biologics, and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the list for the month of July 1994. The monthly list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 13th day of September 1994.

Terry E. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–23118 Filed 9–16–94; 8:45 am]

BILLING CODE 3410–34–P

Soil Conservation Service

Waimea-Paauilo Watershed, County of Hawaii, Hawaii; Intent To Prepare an Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Waimea-Paauilo Watershed, Hawaii County, Hawaii.

FOR FURTHER INFORMATION CONTACT: Kenneth Kaneshiro, State Conservationist, Soil Conservation Service, Room 4316, 300 Ala Moana Blvd, Honolulu, HI 96850, telephone (808) 541–2600.

SUPPLEMENTARY INFORMATION: An environmental evaluation of this federally assisted action indicates that the project may cause significant impacts on the environment. As a result, Kenneth Kaneshiro, State Conservationist has determined that the preparation and review of an environmental impact statement is needed for this project.

The purpose of this watershed project is agricultural water management (irrigation and livestock water). The project will include the installation of transmission pipelines from the Upper Hamakua Ditch, a storage reservoir, irrigation water pipeline, and livestock water pipelines.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. A scoping meeting will be held at Kuhio Hale (mile marker 55 on Mamalahoa Highway) in Kamuela on September 21, 1994, at 6:30 PM. Further information on the proposed action or the scoping meeting may be obtained from Kenneth Kaneshiro, State Conservationist, at the above address, or from Gary Kam, District Conservationist, Soil Conservation Service, P.O. Box 1089, Kamuela, HI 96743–1089, telephone (808) 885–6602.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: September 13, 1994.

Kenneth Kaneshiro,

State Conservationist.

[FR Doc. 94–23193 Filed 9–16–94; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southeast Region Logbook Family of Forms.

Agency Form Number: 88–186.

OMB Approval Number: 0648–0016.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 19,273 hours.

Number of Respondents: 4,482 (approximately 22 responses per respondent).

Avg Hours Per Response: Varies by form — between 8 and 13 minutes per form.

Needs and Uses: Under the authority of the Magnuson Fishery Conservation and Management Act, Regional Fishery Management Councils develop fishery management plans to conserve and manage marine resources. One of the management measures taken to oversee regulated fisheries is to require fishermen to maintain logbooks on their catch. This request covers nine logbook programs.

Affected Public: Businesses or other for–profit institutions, small businesses or organizations.

Frequency: After every set or trip.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration.

Title: Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities.

Agency Form Number: None.

OMB Approval Number: 0648–0151.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 3,975 hours.

Number of Respondents: 33 (2 responses per respondent).

Avg Hours Per Response: Varies depending on the requirement but the general range is from 3 to 483 hours.

Needs and Uses: The Marine Mammal Protection Act imposed, with certain exceptions, a moratorium on the taking of marine mammals. The Secretary is authorized through the Act to make exceptions to the taking of a small number of marine mammals incidental to nonfishing operations. This request is for the application and other required reports.

Affected Public: Individuals, state or local governments, businesses or other for–profit institutions, and federal agencies.

Frequency: On occasion, annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Region Federal Fisheries Permits.

Agency Form Number: None assigned.

OMB Approval Number: 0648–0202.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 38,125 hours.

Number of Respondents: 43,402 (2 or more responses per respondent).

Avg Hours Per Response: Varies by requirement but ranges between 5 minutes and 5 hours.

Needs and Uses: Participants in the marine fishing industry, including vessel owners, operators and fish dealers, who wish to participate in controlled Northeast regional fisheries must apply for, and obtain, permits.

Affected Public: Individuals, state or local governments, businesses or other for–profit institutions, non–profit institutions, small businesses or organizations.

Frequency: On occasion, weekly, monthly, and annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: September 9, 1994

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–23065 Filed 9–16–94; 8:45 am]

BILLING CODE 3510–CW–F

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviewers of Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products and Certain Cut-To-Length Carbon Steel Plate from Various Countries

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amendment to notice of initiation.

SUMMARY: A company's request for an administrative review was inadvertently omitted from the notice published in the **Federal Register** on September 8, 1994, entitled "Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews of Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products and Certain Cut-To-Length Carbon Steel Plate from Various Countries." The Department of Commerce (the Department) is amending the notice published on September 8, 1994.

EFFECTIVE DATE: September 19, 1994.

FOR FURTHER INFORMATION CONTACT: Maureen Price, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–2104.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 C.F.R. 353.22(a) and 355.22(a) (1994), for administrative reviews of the antidumping duty orders on roll-rolled and corrosion resistant carbon steel flat products and certain cut-to-length carbon steel plate from various countries. The Department's notice initiating those reviews inadvertently omitted the request of one producer in Australia. Therefore, we are amending the Notice of Initiation of September 8, 1994.

Initiation of Reviews

In accordance with sections 19 C.F.R. 353.22(c) and 355.22(c), we are initiating the administrative review of the antidumping duty order on certain corrosion-resistant carbon steel flat products for the company listed below, thereby amending the Notice of Initiation published on September 8, 1994.

Antidumping duty proceedings		Period to be reviewed
Australia (A–602–803) *Certain Corrosion-Resistant Carbon Steel Flat Products:* Broken Hill Proprietary Company, Ltd.	A–602–803	2/4/93–7/31/94

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 C.F.R. 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 C.F.R. 353.22(c)(1) and 355.22(c)(1).

Dated: September 14, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–23250 Filed 9–16–94; 8:45 am]

BILLING CODE 3510–DS–M

National Institute of Standards and Technology

Inventions, Government-Owned; Availability for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Government-owned inventions available for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: Marcia Salkeld, National Institute of Standards and Technology, Office of Technology Commercialization, Physics Building, Room B–256, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: The inventions available for licensing are:

NIST Docket No. 90–030

Title: Improved Monomers for Double Ring-Opening Polymerization with Expansion

Description: NIST researchers have created a new class of monomers that undergo double ring-opening polymerization with an expansion in volume. When used in resinous compositions the result is a volume neutral curing process at ambient temperature, and a final product that exhibits high adhesive strength.

NIST Docket No. 91–008D

Title: Planar Epitaxial Films of Sn02

Description: This invention provides smooth, high quality planar epitaxial films of tin oxide. The films are valuable for use in chemical sensors, optics and electronics; and the low cost fabrication method is well suited to large scale production.

NIST Docket No. 92–016

Title: A Chemically Assisted Process for the Machining of Ceramics

Description: A new NIST process makes the matching of ceramic materials more practical and cost-effective. The process uses halogenated hydrocarbons to machine ceramic materials. This increases the rate of material removal by 40–100 percent and reduces the surface roughness by 40–60 percent.

NIST Docket No. 92–056

Title: Serial/Parallel Correlator for Words and Phrases

Description: A novel computer method allows for more efficient identification of misspelled words contained in large databases. The method is readily applicable for improving the reliability of "mechanical eyes" used, for example, for sorting mail or reading Census Bureau forms.

NIST Docket No. 93–001

Title: Intermetallic Titanium-Aluminum-Niobium-Chromium Alloys

Description: NIST researchers have developed new alloys that possess superior combinations of room and high temperature mechanical

properties. These low density titanium-aluminum-niobium-chromium alloys could find use in a new generation of jet turbines, in aircraft bodies, or as metal-matrix composites.

NIST Docket No. 93–004D

Title: Method for the Production of Predetermined Concentration Graded Alloys

Description: NIST researchers have designed a new process for tailoring extremely thin metal layers within an alloy. The process allows strength, conductivity, thermal expansion and other properties to be optimized at various levels below a material surface.

NIST Docket No. 93–026

Title: Method of Obtaining High Green Density Ceramics From Powders

Description: This invention is a novel method of preparing slurries of fine ceramic powders in which the ceramic particles are dispersed more effectively. The resulting ceramic products have higher green densities which makes them useful in many applications, including high temperature components.

Dated: September 12, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–23039 Filed 9–16–94; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 083194D]

Western Pacific Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of change of public meeting location.

SUMMARY: Due to construction, the meeting location of the subcommittee of the Western Pacific Fishery Management Council's Scientific and Statistical Committee to be held on September 19, 1994, from 8:30 a.m. until 5:00 p.m. as published September 8, 1994 (59 FR 46398), has been changed from the conference room of the NMFS Honolulu Laboratory, 2570 Dole Street, Honolulu, HI.

The new location will be Conference Room 407, State Office Tower, Leiopapa A Kamehameha Building, 235 S. Beretania Street, Honolulu, HI.

All other information as printed in the previous publication remains unchanged.

Dated: September 13, 1994.

David S. Crestin,

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

[FR Doc. 94–23046 Filed 9–16–94; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act 44 U.S.C. Chapter 35).

Title: Evaluation of the DoD Student Testing Program

Type of Request: Expedited processing—approval date requested 30 days after publication in the **Federal Register.**

Number of Respondents: 1,828

Responses per Respondent: 1.62

Annual Responses: 2,968

Average Burden per Response: .27 hours

Annual Burden Hours: 815.1

Needs and Uses: Data will be collected from high school students and guidance staff to permit an evaluation of the DoD Student Testing Program (also Known as Career Exploration Program) and recommendations for improvements. About 1,000,000 students participate in this program each year. Additionally, expert counselors will review the program and input will be solicited from other involved stakeholders

Affected Public: Individuals or households; State or local Governments

Frequency: On Occasion

Respondent's Obligation: Voluntary

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: September 14, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–23104 Filed 9–16–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Privacy Act of 1974; Notice to Add Systems of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to add systems of records.

SUMMARY: The Department of the Army proposes to add two record systems to its inventory of systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on October 19, 1994, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Information Requirements Division, ASOP-MP, Department of the Army, Fort Huachuca, AZ 85613–5000.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Turner at (602) 538–6856 or DSN 879-6856.

SUPPLEMENTARY INFORMATION: The complete inventory of the Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the above address.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on September 8, 1994, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated July 25, 1994 (59 FR 37906, July 25, 1994).

Dated: September 13, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0027–40CE

SYSTEM NAME:

Corps of Engineers Case Management Information Files.

SYSTEM LOCATION:

U.S. Army Engineer Division, South Atlantic, CESAD-IM-SO-S, 77 Forsyth Street, SW, Atlanta, GA 30335–6801, with input and access locations at all Corps of Engineers' Counsel Offices. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in litigation, contract claims and appeals, procurement fraud, potentially responsible party negotiations under the Comprehensive Environmental Response Compensation and Liability Act, and patents and technology transfer with the Corps of Engineers, including parties to the action, attorneys, forum officials, contracting officers, project managers, inventors, witnesses, Corps of Engineers' attorneys and other Federal agency attorneys.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to litigation, contract claims and appeals, procurement fraud, potentially responsible party negotiations under the Comprehensive Environmental Response Compensation and Liability Act and patents and technology transfer, involving the Corps of Engineers; including names, addresses and phone numbers of individuals, case name, the forum, status of the action, summaries of the action, action number, project name and location, remedies or relief requested, milestones and suspense dates, title of invention and royalty information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 2301 et seq.; 15 U.S.C. 1 et seq.; 15 U.S.C. 3701 et seq.; 31 U.S.C. 3729 et seq; and 42 U.S.C. 9601 et seq; and E.O. 9397.

PURPOSE(S):

To allow the Corps of Engineers legal offices to monitor, and to contact individuals involved in, litigation, contract claims and appeals, procurement fraud, potentially responsible party negotiations under the Comprehensive Environmental Response Compensation and Liability Act, and patents and technology transfer, involving the Corps of Engineers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Litigation, contract and appeal records are disclosed to Department of Justice and U.S. Attorney's offices involved in a particular case, for use in the litigation. Most of this information is filed in the courts and is therefore a public record.

Procurement fraud records may be disclosed to Department of Justice and U.S. Attorney's offices for use in litigation.

Names of individuals and companies involved in potentially responsible party negotiations may be disclosed to the Environmental Protection Agency, Department of Justice and the involved parties for the purpose of facilitating potentially responsible party negotiations.

Patent records may be disclosed to the U.S. Patent and Trademark Office, Department of Commerce; appropriate authorities in foreign countries, for foreign patent filings; parties to a licensing arrangement for specific files involved; and contractors and government agencies, to conduct patent investigations and evaluations.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes/disks and printouts.

RETRIEVABILITY:

By individual's name, address and telephone number; in conjunction with the forum name; docket or contract number; office symbol; action name; file number; type of action; category of action; disposition of action; date of action and amount of award.

SAFEGUARDS:

Access is restricted to authorized users in Corps of Engineers' legal offices. Computer records are maintained in a building protected by security guards. Access or update of information in automated media is by a system of passwords. Printed records are kept in locked offices. Access to procurement fraud information is further restricted to those having a need therefore in the performance of official duties.

RETENTION AND DISPOSAL:

Records relating to Civil Works litigation, contract claims and appeals and potentially responsible party negotiations are retained for 30 years or indefinitely depending on the specific case.

Records for cases and contract claims not involving litigation are retained for 10 years.

Records relating to procurement fraud matters are retained for 1 year after the close of the case.

Records relating to government patent applications are retained for 25 years.

Records relating to technology transfer matters are retained until superseded or obsolete.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Chief Counsel, ATTN: CECC-ZB, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000.

Individual must provide full name, current address and telephone number, category of record (litigation, contract claims and appeals, procurement fraud, potentially responsible party negotiations, patents or technology transfer) and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Chief Counsel, U.S. Army Corps of Engineers, ATTN: CECC-ZB, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000.

Individual must provide full name, current address and telephone number, category of record (litigation, contract claims and appeals, procurement fraud, potentially responsible party negotiations, patents or technology transfer) and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From documents provided by the individual, his/her attorney, court records, Army records, investigation reports, other Federal agencies and state and local agencies, the Patent and Trademark Office.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A1130–2–442CE

SYSTEM NAME:

Corps of Engineers Civilian Uniform Record Files.

SYSTEM LOCATION:

U.S. Army Corps of Engineers District Commands, Water Resources Development Projects and uniform contractors. Segments of this system are also maintained at Engineer Divisions and Corps of Engineers Headquarters. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices, or may be obtained from the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Corps of Engineers' personnel required to wear uniforms, including Natural Resources Management, Lock and Dam and Floating Plant personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to personal clothing; name, account number, sex, project location, weight, height, clothing measurements, length of employment and type of uniform (ENG Form 4891–R and uniform contractor's order forms).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5901–5903; Engineer Regulations 1130–2–442, 670–2–2, and 670–2–3; and E.O. 9397.

PURPOSE(S):

To facilitate ordering, and to reflect accountability for civilian uniforms issued to the Corps of Engineers' Natural Resources Management, Lock and Dam and Floating Plant personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices, apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; magnetic tapes/discs.

RETRIEVABILITY:

By name and account number in conjunction with, project location, length of employment and type of uniform.

SAFEGUARDS:

Records are maintained in locked buildings, offices and files. Most buildings are also protected by security guards. Access to the system is limited to authorized Corps of Engineers personnel and uniform contractors who have a need therefor in the performance of their official duties.

RETENTION AND DISPOSAL:

Files are destroyed one year after separation of employee.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Engineers, Headquarters U.S. Army Corps of Engineers, ATTN: CECW-OD, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief of Engineers, ATTN: CECW-OD, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000.

Individual must provide full name, current address and telephone number, account number (last four digits of their Social Security Number), project location and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief of Engineers, U.S. Army Corps of Engineers, ATTN: CECW-OD, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000.

Individual must provide full name, current address and telephone number, account number (last four digits of their Social Security Number), project location and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 94–23040 Filed 9–16–94; 8:45 am]

BILLING CODE 5000–04–F

Defense Logistics Agency

Privacy Act of 1974; Alteration of a Record System

AGENCY: Defense Logistics Agency, DoD.

ACTION: Alteration of a record system.

SUMMARY: The Defense Logistics Agency proposes to alter an existing system of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration adds the Department of Labor as a routine user to comply with regulatory requirements to report serious accidents (29 CFR 1960.70).

DATES: The alteration will be effective without further notice on October 19, 1994, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Privacy Act Officer, Programs and Analysis Division, Office of Planning and Resource Management, Defense Logistics Agency Administrative Support Center, Room 5A120, Cameron Station, Alexandria, VA 22304–6100.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 617–7583.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and may be obtained from the address above.

An altered system report, as required by 5 U.S.C. 552a(5) of the Privacy Act was submitted on September 8, 1994, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated July 15, 1994 (59 FR 37906, July 25, 1994). The specific changes to the record system are set forth below followed by the system notice as altered in its entirety.

Dated: September 13, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S370.20 DLA-WH

SYSTEM NAME:

Individual Accident Case Files *(February 22, 1993, 58 FR 10891).*

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Delete entry and replace with 'S600.30 CAAE.'

SYSTEM NAME:

Delete entry and replace with 'Safety and Health Accident Case Files.'

SYSTEM LOCATION:

Delete entry and replace with 'Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100, and the DLA Primary Level Field Activity Safety and Health offices. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All individuals who are injured, made ill, or suffer property damage resulting from DLA operations.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Name, Social Security Number, age, home address and telephone number, accident reports, witness statements, photographs, and proposed or actual corrective action, where appropriate.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete and replace with '10 U.S.C. 136, Assistant Secretaries of Defense; 29 U.S.C. 651 et seq., The Occupational Safety and Health Act of 1970 (OSHA); E.O. 9397 (SSN); E.O. 12196, Occupational Safety and Health Programs for Federal Employees; 29 CFR part 1960, subpart I, Recordkeeping and Reporting Requirements for Federal Occupational Safety and Health Programs.'

PURPOSE(S):

Delete entry and replace with 'Information is maintained to comply with regulatory reporting requirements; to identify cause of accident; to formulate accident prevention programs; to identify individuals involved in repeated accidents; and to prepare statistical reports as required.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add as a second paragraph after 'as follows:' 'To the Department of Labor to comply with the requirement to report Federal civilian employee on-the-job accidents.'

STORAGE:

Delete entry and replace with 'Records are stored in paper and electronic formats.'

RETRIEVABILITY:

Delete entry and replace with 'Retrieved by name, Social Security Number, or mishap report number.'

SAFEGUARDS:

Delete entry and replace with 'Access is limited to record custodian or persons responsible for servicing the record in performance of their official duties. Paper records are stored in locked cabinets or rooms controlled by personnel screening. Access to electronic records is restricted by the use of passwords which are changed periodically.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Cases involving reportable mishaps are destroyed five years after case is closed. Cases involving non-reportable mishaps are destroyed three years after case is closed.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Staff Director, Environmental and Safety Policy, Headquarters, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100; and the Safety and Health Offices of the Defense Logistics Agency Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the system manager of the particular Defense Logistics Agency activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking access to records about themselves contained in this system of records should address inquiries to the system manager of the particular Defense Logistics Agency activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Information is obtained from the record subject, supervisors, medical units, DLA protective service, civilian police, fire departments, investigating officers, or witnesses to accident.'

* * * * *

S600.30 CAAE

SYSTEM NAME:

Safety and Health Accident Case Files.

SYSTEM LOCATION:

Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100, and the DLA Primary Level Field Activity Safety and Health offices. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who are injured, made ill, or suffer property damage resulting from DLA operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, age, home address and telephone number, accident reports, witness statements, photographs, and proposed or actual corrective action, where appropriate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Assistant Secretaries of Defense; 29 U.S.C. 651 et seq., The Occupational Safety and Health Act of 1970 (OSHA); E.O. 9397 (SSN); E.O. 12196, Occupational Safety and Health Programs for Federal Employees; 29 CFR part 1960, subpart I, Recordkeeping and Reporting Requirements for Federal Occupational Safety and Health Programs.

PURPOSE(S):

Information is maintained to comply with regulatory reporting requirements; to identify cause of accident; to formulate accident prevention programs; to identify individuals involved in repeated accidents; and to prepare statistical reports as required.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Labor to comply with the requirement to report Federal civilian employee on-the-job accidents (29 CFR 1960).

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and electronic formats.

RETRIEVABILITY:

Retrieved by name, Social Security Number, or mishap report number.

SAFEGUARDS:

Access is limited to record custodian or persons responsible for servicing the record in performance of their official duties. Paper records are stored in locked cabinets or rooms controlled by personnel screening. Access to electronic records is restricted by the use of passwords which are changed periodically.

RETENTION AND DISPOSAL:

Cases involving reportable mishaps are destroyed five years after case is closed. Cases involving non-reportable mishaps are destroyed three years after case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Environmental and Safety Policy, Headquarters, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100; and the Safety and Health Offices of the Defense Logistics Agency Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the system manager of the particular Defense Logistics Agency activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the system manager of the particular Defense Logistics Agency activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from the record subject, supervisors, medical units, DLA protective service, civilian police, fire departments, investigating officers, or witnesses to accident.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 94–23041 Filed 9–16–94; 8:45 am]

BILLING CODE 5000–04–F

Privacy Act of 1974; Alteration of a Record System

AGENCY: Defense Logistics Agency, DoD.

ACTION: Alteration of a record system.

SUMMARY: The Defense Logistics Agency proposes to alter an existing system of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The Defense Logistics Agency proposes to add an additional routine use for the system as follows: To the Department of Health and Human Services for the purpose of conducting studies concerned with the health and well being of the active duty and veteran population.

DATES: The alteration will be effective without further notice on October 19, 1994, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Privacy Act Officer, Programs and Analysis Division, Office of Planning and Resource Management, Defense Logistics Agency Administrative Support Center, Room 5A120, Cameron Station, Alexandria, VA 22304–6100.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 617–7583.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and may be obtained from the address above.

An altered system report, as required by 5 U.S.C. 552a(5) of the Privacy Act was submitted on September 8, 1994, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated July 15, 1994 (59 FR 37906, July 25, 1994). The specific changes to the record system are set forth below followed by the system notice as altered in its entirety.

Dated: September 13, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base *(February 22, 1993, 58 FR 10872).*

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a sixth paragraph under the purposes for the Department of Health and Human Services as follows: '6. To the Center for Disease Control, DHHS, for the purpose of conducting studies concerned with the health and well being of the active duty and veteran population.'

* * * * *

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base *(February 22, 1993, 58 FR 10872).*

SYSTEM LOCATION:

Primary location—W.R. Church Computer Center, Naval Postgraduate School, Monterey, CA 93943–5000.

Back-up files maintained in a bank vault in Hermann Hall, Naval Postgraduate School, Monterey, CA 93943–5000.

Decentralized segments—Portions of this file may be maintained by the military and non-appropriated fund personnel and finance centers of the military services, selected civilian contractors with research contracts in manpower area, and other Federal agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All uniformed services officers and enlisted personnel who served on active duty from July 1, 1968, and after or who have been a member of a reserve component since July 1975; retired military personnel; participants in Project 100,000 and Project Transition, and the evaluation control groups for these programs. All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later.

DOD civilian employees since January 1, 1972. All veterans who have used the GI Bill education and training employment services office since

January 1, 1971. All veterans who have used GI Bill education and training entitlements, who visited a state employment service office since January 1, 1971, or who participated in a Department of Labor special program since July 1, 1971. All individuals who ever participated in an educational program sponsored by the U.S. Armed Forces Institute and all individuals who ever participated in the Armed Forces Vocational Aptitude Testing Programs at the high school level since September 1969.

Individuals who responded to various paid advertising campaigns seeking enlistment information since July 1, 1973; participants in the Department of Health and Human Services National Longitudinal Survey. Individuals responding to recruiting advertisements since January 1987; survivors of retired military personnel who are eligible for or currently receiving disability payments or disability income compensation from the Department of Veteran Affairs; surviving spouses of active or retired deceased military personnel; 100% disabled veterans and their survivors; individuals identified in Service child and spouse abuse registries as sponsors, offenders or victims.

Individuals receiving disability compensation from the Department of Veteran Affairs or who are covered by a Department of Veteran Affairs' insurance or benefit program; dependents of active duty military retirees, selective service registrants.

Individuals receiving a security background investigation as identified in the Defense Central Index of Investigation. Former military and civilian personnel who are employed by DOD contractors and are subject to the provisions of 10 U.S.C. 2397.

All U.S. Postal Service employees.

All Federal Civil Service employees.

All non-appropriated funded individuals who are employed by the Department of Defense.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized personnel/employment/pay records consisting of name, Service Number, Selective Service Number, Social Security Number, compensation data, demographic information such as home town, age, sex, race, and educational level; civilian occupational information; civilian and military acquisition work force warrant location, training and job specialty information; military personnel information such as rank, length of service, military occupation, aptitude scores, post-service education, training, and employment information for veterans; participation in various inservice education and training programs; military hospitalization records; home and work addresses; and identities of individuals involved in incidents of child and spouse abuse, and information about the nature of the abuse and services provided.

CHAMPUS claim records containing enrollee, patient and health care facility, provided data such as cause of treatment, amount of payment, name and Social Security or tax I.D. of providers or potential providers of care.

Selective Service System registration data.

Department of Veteran Affairs disability payment records.

Credit or financial data as required for security background investigations.

Criminal history information on individuals who subsequently enter the military.

U.S. Postal Service employment/personnel records containing Social Security Number, name, salary, home and work address. U.S. Postal Service records will be maintained on a temporary basis for approved computer matching between the U.S. Postal Service and DOD.

Office of Personnel Management (OPM) Central Personnel Data File (CPDF), an extract from OPM/GOVT–1, General Personnel Records, containing employment/personnel data on all Federal employees consisting of name, Social Security Number, date of birth, sex, work schedule (full-time, part-time, intermittent), annual salary rate (but not actual earnings), occupational series, position occupied, agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier. Extract from OPM/CENTRAL–1, Civil Service Retirement and Insurance Records, containing Civil Service Claim number, date of birth, name, provision of law retired under, gross annuity, length of service, annuity commencing date, former employing agency and home address. These records provided by OPM for approved computer matching.

Non-appropriated fund employment/personnel records consist of Social Security Number, name, and work address.

AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Assistant Secretaries of Defense; Appointment Powers and Duties; 10 U.S.C. 2358; Research Projects; 5 U.S.C. App. 3 (Pub. L. 95–452, as amended (Inspector General Act of 1978)); and E.O. 9397.

PURPOSE(S):

The purpose of the system of records is to provide a single central facility within the Department of Defense to assess manpower trends, support personnel functions, to perform longitudinal statistical analyses, identify current and former DOD civilian and military personnel for purposes of detecting fraud and abuse of pay and benefit programs, to register current and former DoD civilian and military personnel and their authorized dependents for purposes of obtaining medical examination, treatment or other benefits to which they are qualified, and to collect debts owed to the United States Government and state and local governments.

All records in this record system are subject to use in authorized computer matching programs within the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Veteran Affairs (DVA) to provide military personnel and pay data for present and former military personnel for the purpose of evaluating use of veterans benefits, validating benefit eligibility and maintaining the health and well being of veterans.

To the Department of Veteran Affairs (DVA) to provide identifying military personnel data to the DVA and its contractor, the Prudential Insurance Company, for the purpose of notifying members of the Individual Ready Reserve (IRR) of their right to apply for Veteran's Group Life Insurance coverage.

To the Department of Veterans Affairs (DVA) to register eligible veterans and their dependents for DVA programs.

To the Department of Veterans Affairs (DVA) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

1. Providing full identification of active duty military personnel, including full-time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program (38 U.S.C. 3104(c), 3006–3008). The information is used to determine

continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment.

2. Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (Title 10 U.S.C., Chapter 106 – Selected Reserve and Title 38 U.S.C., Chapter 30 – Active Duty). The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

3. Providing identification of reserve duty, including full-time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 684) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

4. Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law (38 U.S.C. 3104(c)) requires recoupment of severance payments before DVA disability compensation can be paid.

5. Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38 U.S.C. 3104(c), 3006–3008). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

To the Office of Personnel Management (OPM) consisting of personnel/employment/financial data for the purpose of carrying out OPM's management functions. Records disclosed concern pay, benefits, retirement deductions and any other information necessary for those management functions required by law (Pub. L. 83–598, 84–356, 86–724, 94–455 and 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347).

To the Office of Personnel Management (OPM) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) for the purpose of:

1. Exchanging personnel and financial information on certain military retirees, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military retired pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

2. Exchanging personnel and financial data on civil service annuitants (including disability annuitants under age 60) who are reemployed by DOD to insure that annuities of DOD reemployed annuitants are terminated where applicable, and salaries are correctly offset where applicable as required by law (5 U.S.C. 8331, 8344, 8401 and 8468).

3. Exchanging personnel and financial data to identify individuals who are improperly receiving military retired pay and credit for military service in their civil service annuities, or annuities based on the 'guaranteed minimum' disability formula. The match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA) 5 U.S.C. 8331 and the Federal Employees' Retirement System Act (FERSA) 5 U.S.C. 8411. DOD's legal authority for monitoring retired pay is 10 U.S.C. 1401.

4. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and cannot be released for extended active duty in the event of mobilization. Employing Federal agencies are informed of the reserve status of those affected personnel so that a choice of terminating the position or the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Services.

To the Internal Revenue Service (IRS) for the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for tax administration. For the purpose of conducting aggregate statistical analyses on the impact of DOD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and delinquent filers.

To the Department of Health and Human Services (DHHS):

1. To the Office of the Inspector General, DHHS, for the purpose of identification and investigation of DOD employees and military members who may be improperly receiving funds under the Aid to Families of Dependent Children Program.

2. To the Office of Child Support Enforcement, DHHS, pursuant to 42 U.S.C. 653 and Pub. L. 94–505, to assist state child support offices in locating absent parents in order to establish and/or enforce child support obligations.

3. To the Health Care Financing Administration (HCFA), DHHS for the purpose of monitoring HCFA reimbursement to civilian hospitals for Medicare patient treatment. The data will ensure no Department of Defense physicians, interns or residents are counted for HCFA reimbursement to hospitals.

4. To the Social Security Administration (SSA), Office of Research and Statistics, DHHS for the purpose of conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings.

5. To the Bureau of Supplemental Security Income, SSA, DHHS to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of verifying information provided to the SSA by applicants and recipients who are retired military members or their survivors for Supplemental Security Income (SSI) benefits. By law (42 U.S.C. 1383) the SSA is required to verify eligibility factors and other relevant information provided by the SSI applicant from independent or collateral sources and obtain additional information as necessary before making SSI determinations of eligibility, payment amounts or adjustments thereto.

6. To HHS for the purpose of conducting studies concerned with the health and well being of the active duty and veteran population.

To the Selective Service System (SSS) for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service registration

regulations (50 U.S.C. App. 451 and E.O. 11623).

To DOD Civilian Contractors for the purpose of performing research on manpower problems for statistical analyses.

To the Department of Labor (DOL) to reconcile the accuracy of unemployment compensation payments made to former DOD civilian employees and military members by the states. To the Department of Labor to survey military separations to determine the effectiveness of programs assisting veterans to obtain employment.–

To the U.S. Coast Guard (USCG) of the Department of Transportation (DOT) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of exchanging personnel and financial information on certain retired USCG military members, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the U.S. Coast Guard and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

To the Department of Housing and Urban Development (HUD) to provide data contained in this record system that includes the name, Social Security Number, salary and retirement pay for the purpose of verifying continuing eligibility in HUD's assisted housing programs maintained by the Public Housing Authorities (PHAs) and subsidized multi-family project owners or management agents. Data furnished will be reviewed by HUD or the PHAs with the technical assistance from the HUD Office of the Inspector General (OIG) to determine whether the income reported by tenants to the PHA or subsidized multi-family project owner or management agent is correct and complies with HUD and PHA requirements.

To Federal and Quasi-Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over payments owed to these programs. To assist in the return of unclaimed property or assets escheated to states of civilian employees and military member and to provide members and former members with information and assistance regarding various benefit entitlements, such as state bonuses for veterans, etc. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements. To private consumer reporting agencies to comply with the requirements to update security clearance investigations of DOD personnel.

To consumer reporting agencies to obtain current addresses of separated military personnel to notify them of potential benefits eligibility.

To Defense contractors to monitor the employment of former DOD employees and members subject to the provisions of 10 U.S.C. 2397.

To financial depository institutions to assist in locating individuals with dormant accounts in danger of reverting to state ownership by escheatment for accounts of DOD civilian employees and military members.

To any Federal, state or local agency to conduct authorized computer matching programs regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a) for the purposes of identifying and locating delinquent debtors for collection of a claim owed the Department of Defense or the Unites States Government under the Debt Collection Act of 1982 (Pub. L. 97–365).

To state and local law enforcement investigative agencies to obtain criminal history information for the purpose of evaluating military service performance and security clearance procedures (10 U.S.C. 2358).

To the United States Postal Service to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

1. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and who cannot be released for extended active duty in the event of mobilization. The Postal Service is informed of the reserve status of those affected personnel so that a choice of terminating the position on the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Forces.

2. Exchanging personnel and financial information on certain military retirees who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of retired military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and permit adjustments to military retired pay to be made by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

The 'Blanket Routine Uses' set forth at the beginning of the DLA compilation of record system notices also apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, occupation, or any other data element contained in system.

SAFEGUARDS:

W.R. Church Computer Center - Tapes are stored in a locked cage in a controlled access area; tapes can be physically accessed only by computer center personnel and can be mounted for processing only if the appropriate security code is provided.

Back-up location - Tapes are stored in a bank-type vault; buildings are locked after hours and only properly cleared and authorized personnel have access.

RETENTION AND DISPOSAL:

Files constitute a historical data base and are permanent.

U.S. Postal Service records are temporary and are destroyed after the computer matching program results are verified.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, 99 Pacific Street, Suite 155A, Monterey, CA 93940–2453.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Director, Defense Manpower Data Center, 99 Pacific Street, Suite 155A, Monterey, CA 93940–2453.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license or military or other identification card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Deputy Director, Defense Manpower Data Center, 99 Pacific Street, Suite 155A, Monterey, CA 93940–2453.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license or military or other identification card.

CONTESTING RECORD PROCEDURES:

DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, Personal Privacy and Rights of Individuals Regarding Their Personal Records; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The military services, the Department of Veteran Affairs, the Department of Education, Department of Health and Human Services, from individuals via survey questionnaires, the Department of Labor, the Office of Personnel Management, Federal and Quasi-Federal agencies, Selective Service System, and the U.S. Postal Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 94–23042 Filed 9–16–94;8:45am].

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by October 1, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Information Resources Management Service, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: September 13, 1994.

Ingrid Kolb,

Acting Director, Information Resources Management Service.

Office of Special Education and Rehabilitative Services

Type of Review: EXPEDITED

Title: Performance Report—Training Personnel for the Education of Individuals with Disabilities

Abstract: These data collection forms will be sent to all grantees and contractors engaged in the development and implementation of quality training programs. The Department will use the information to report to Congress.

Additional Information: Clearance for this information collection is requested for October 1, 1994. An expedited review is requested because of the legal requirement that grantees must submit their data prior to November 30.

Frequency: Annually

Affected Public: State or local governments; businesses or other for-profit; non-profit institutions; small businesses or organizations

Reporting Burden:
Responses: 902
Burden Hours: 1,202

Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0.

[FR Doc. 94–23098 Filed 9–16–94; 8:45 am]

BILLING CODE 4000–01–M

National Committee on Foreign Medical Education and Accreditation; Meeting

AGENCY: National Committee on Foreign Medical Education and Accreditation, Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a partially closed meeting of the National Committee on Foreign Medical Education and Accreditation. This notice also describes the functions of the Committee.

DATES AND TIMES: September 22, 1994—9 a.m. until 5 p.m.; September 23, 1994—9 a.m. until 12 noon.

ADDRESSES: U.S. Department of Education, 7th and D Streets SW., Room 7511, Regional Office Building #3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Carol F. Sperry, Executive Director, National Committee on Foreign Medical Education and Accreditation, 600 Independence Avenue SW., Room 3036 ROB #3, Washington, DC 20202–7563. Telephone: (202) 708–7417. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The National Committee on Foreign Medical Education and Accreditation is established under section 481 of the

Higher Education Act of 1965, as amended (20 U.S.C. 1088). This Committee does not have advisory functions but rather carries out operational activities of the U.S. Department of Education. The Committee evaluates the standards of accreditation applied to applicant foreign medical schools and determines the comparability of those standards to standards for accreditation applied to United States medical schools. The morning portion of the September 22, 1994, meeting, from 9:00 a.m. to 12:00 noon, will be closed to the general public to hold an orientation session for the Committee members. The afternoon session, from 1:00 p.m. until 5:00 p.m., will be open to the public. It will begin with a general discussion of the Committee's role and responsibilities and will continue with a discussion of criteria against which comparability will be determined. This discussion will be continued on September 23, 1994, from 9:00 a.m. until 12:00 noon. This session also will be open to the public. A reasonable amount of time for public comment, as determined by the Chairman, will be allowed at the sessions that are open to the public.

A record will be made of the proceedings of the public portions of the meeting and will be available for public inspection at the Office of Postsecondary Education, U.S. Department of Education, 7th and D Streets SW., Room 3036, ROB #3, Washington, DC 20202 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Dated: September 13, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–23089 Filed 9–16–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Nevada Test Site.

DATES: Wednesday, October 5, 1994: 5:30 p.m.–10 p.m.

ADDRESSES: Holiday Inn Crowne Plaza, 4255 South Paradise Road, Las Vegas, NV.

FOR FURTHER INFORMATION CONTACT: Don Beck, Public Participation Program Manager, Office of Public Accountability, EM–5, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–7633.

SUPPLEMENTARY INFORMATION: Purpose of the committee: The EM SSAB provides input and recommendations to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

Wednesday, October 5, 1994
5:30 p.m.
- Call to Order
- Review Agenda
- Minutes Acceptance
- Financial Report
- Correspondence
- Reports from Committees, Delegates and Representatives
- Unfinished Business
- New Business
- Evaluation of Board and Environmental Restoration and Waste Management Program
- Announcements

10:00 p.m.
- Adjournment

If needed, time will be allotted after public comments for old business, new business, items added to the agenda, and administrative details.

A final agenda will be available at the meeting Wednesday, October 5, 1994.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Don Beck's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the date of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays.

Issued at Washington, DC on September 14, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–23122 Filed 9–16–94; 8:45 am]

BILLING CODE 6450–01–M

Environmental Management Site Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Savannah River Site.

DATES:
- Friday, September 30, 1994: 7:00 p.m.–10:00 p.m.
- Saturday, October 1, 1994: 8:30 a.m. to 9:00 p.m.
- Sunday, October 2, 1994: 9:00 a.m.–12:00 noon

ADDRESSES: All meetings will be held at: Holiday Inn, One Center Street, Folly Beach, South Carolina.

FOR FURTHER INFORMATION CONTACT: Tom Hennan, Manager, Environmental Restoration and Solid Waste, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802 (803)725–8074.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Friday, September 30, 1994
- 7:00 p.m.—Team Building and Consensus Building Training, 1994

Saturday, October 1, 1994
- 8:30 a.m.—An Overview of the Savannah River Site and Briefing on Worker Safety Risk Management and Radiation
- 9:00 p.m.—Adjourn

Sunday, October 2, 1994
- 9:00 a.m.—Briefings and Discussion on Risk Management
- 11:30 a.m.—Public Comment Period (5-minute rule)
- 12:00 p.m.—Adjourn

A final agenda will be available at the meeting Friday, September 30, 1994.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either

before or after the meeting. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Hennan's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 120585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Tom Hennan, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling him at (803)–725–8074.

Issued at Washington, DC on September 14, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–23123 Filed 9–16–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER94–589–000, et al.]

Southern California Edison Company, et al.; Electric Rate and Corporate Regulation Filings

September 12, 1994.

Take notice that the following filings have been made with the Commission:

1. Southern California Edison Company

[Docket No. ER94–589–000]

Take notice that on August 30, 1994, Southern California Edison Company tendered for filing an amendment in the above-referenced docket.

Comment date: September 26, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Great Bay Power Corporation

[Docket No. ER94–1589–000]

Take notice that on September 7, 1984, Great Bay Power Corporation (Great Bay) tendered for filing a fully executed service agreement between Louis Dreyfus Electric Power Inc. and Great Bay for service under Great Bay's Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on November 11, 1993, in Docket No. ER93–924–000. The service agreement is proposed to be effective August 1, 1994.

Comment date: September 26, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of New Hampshire

[Docket No. ER94–1616–000]

Take notice that on September 1, 1994, Public Service Company of New Hampshire (PSNH) tendered for filing an Amendment (the "Amendment") to the Total Requirements Resale Service Agreement between PSNH and Citizens Utilities Company (Citizens). PSNH has requested an effective date for the Amendment of November 1, 1994.

PSNH states that the Amendment would implement an additional charge under the Requirements Agreement to permit PSNH to recover from Citizens the increased costs to PSNH resulting from PSNH's implementation of the Statement of Financial Accounting Standards No. 106 which concerns the accounting for post-retirement benefits other than pensions.

PSNH states that copies of the filing were served on the Vermont Public Service Board, which is the only State Commission within whose jurisdiction the Municipal Customers distribute and sell electric energy at retail.

Comment date: September 26, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Company (Minnesota)

[Docket No. ER94–1622–000]

Take notice that on September 2, 1994, Northern States Power Company (Minnesota) [NSP-MN] tendered for filing an Interconnection and Interchange Agreement dated September 17, 1993, between NSP-MN, Northern States Power Company (Wisconsin) [NSP-WI], and Upper Peninsula Power Company [UPP]. NSP-MN files this agreement on behalf of NSP-WI, UP, and itself.

The Interconnection and Interchange Agreement provides for the interchange of electrical power and energy between the parties as well as the possible future interconnected electrical operation between the parties' systems. The Commission has been requested to accept the agreement for filing effective November 1, 1994.

Comment date: September 26, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Orange and Rockland Utilities, Inc

[Docket No. ER94–1631–000]

Take notice that on September 6, 1994, Orange and Rockland Utilities, Inc. tendered for a Notice of Cancellation of the contract with Orange Development Corporation.

Comment date: September 26, 1994, in accordance with Standard Paragraph E at the end of this notice

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, 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 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23132 Filed 9–16–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–396–000]

Alabama-Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 13, 1994.

Take notice that on September 6, 1994, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet:

Second Revised Sheet No. 4A

Alabama-Tennessee proposes that this tariff sheet be made effective October 1, 1994. In this regard, Alabama-Tennessee requests that the Commission grant a waiver of Section 154.22 of its Regulations so that this tariff sheet might be made effective on less than thirty days notice.

Alabama-Tennessee states that the purpose of this filing is to adjust the take-or-pay charges applicable to each of its jurisdictional sales and transportation customers pursuant to

the reconciliation procedures established under Article I, Section A.3 of the settlement approved by the Commission on October 17, 1991. Alabama-Tennessee states that this reconciliation has resulted in an increase in the Direct Billed Obligation and a reduction in the Volumetric Surcharge (as those terms are defined under the settlement) that Alabama-Tennessee is authorized to collect from its jurisdictional sales and transportation customers.

In addition to the waiver of Section 154.22, Alabama-Tennessee requests such other waivers of the Commission's Regulations as will be necessary to permit the tariff sheet to become effective as proposed in its filing.

Alabama-Tennessee states that copies of its filing were served upon its customers and interested public bodies, and all persons on the Commission's official service list in the captioned docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, 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 or protests should be filed on or before September 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23051 Filed 9–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–99–004]

Colorado Interstate Gas Co.; Filing of Tariff Sheets

September 13, 1994.

On September 8, 1994, Colorado Interstate Gas Company (CIG) filed the tariff sheets identified below:

First Revised Volume No. 1
- Third Revised Sheet No. 7
- Third Revised Sheet No. 8
- Third Revised Sheet No. 9
- Fourth Revised Sheet No. 10
- Third Revised Sheet No. 12
- Second Revised Sheet No. 358

Original Volume No. 2
- Twelfth Revised Sheet No. 187
- Eleventh Revised Sheet No. 463

CIG states that the instant tariff sheets implement the rates reflected in the Stipulation and Agreement filed August 16, 1994, by CIG as an offer of settlement in this Docket. CIG states that the instant sheets will implement the settlement rates for a period beginning October 1, 1994, pending approval of the August 16 settlement offer.

CIG requests that the Commission grant CIG whatever waivers are necessary under its regulations (including the 30-day notice period) in order to allow the instant tariff sheets to become effective on October 1, 1994.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All such protests should be filed on or before September 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23052 Filed 9–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–113–003]

Columbia Gas Transmission Corp. Proposed Changes in FERC Gas Tariff

September 13, 1994.

Take notice that on September 9, 1994, Columbia Gas Transmission Corporation (Columbia) tendered for filing the following proposed changes to its FERC Gas Tariffs, Second Revised Volume No. 1 and Original Volume No. 2, to be effective June 30, 1994:

- Second Revised Volume No. 1
- Second Revised Sheet No. 8
- First Revised Sheet No. 9
- Second Revised Sheet No. 11
- Original Volume No. 2
- Eighteenth Revised Sheet No. 4B
- Fifteenth Revised Sheet No. 4C
- Twelfth Revised Sheet No. 4E
- First Revised Sheet No. 764
- First Revised Sheet No. 931
- First Revised Sheet No. 1372

Columbia states that the purpose of this filing is to cancel its Rate Schedules which embody gas exchange agreements as follows: Rate Schedule X–78 dated January 24, 1978 between Columbia, Columbia Gulf Transmission Company and Tennessee Gas Pipeline Company (Tennessee); Rate Schedule X–90 dated December 29, 1978 between Columbia, Tennessee and Northern Natural Gas Company; and, Rate Schedule X–119 dated December 8, 1982 between Columbia and Tennessee. These agreements, which were authorized by the Federal Energy Regulatory Commission's (Commission) aforementioned orders, are being cancelled pursuant to the Commission's order issued June 30, 1994, in Docket No. RP94–113–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426 in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before September 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23053 Filed 9–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–7–4–000]

Granite State Gas Transmission Inc.; Proposed Changes in FERC Gas Tariff

September 13, 1994.

Take notice that on September 9, 1994, Granite State Gas Transmission, Inc. (Granite State), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 Second Revised Sheet No. 24, containing changes in rates for effectiveness on September 1 1994.

According to Granite State, the revised rates on Second Revised Sheet No. 24 are applicable to its Rate Schedule LMS (Load Management Service) which provides for swings in excess of the daily variance tolerance above or below scheduled nominations for deliveries to its firm transportation customers under its Rate Schedule FT–NN. It is further stated that Granite State's Rate Schedule LMS service relies on a parallel daily swing service provided by Tennessee Gas Pipeline Company (Tennessee) under its Rate Schedule LMS–MA. Granite State further states that the rates for its Rate Schedule LMS service are identical with

and track the rates for Tennessee's underlying service.

Granite State also states that Tennessee filed revised tariff sheets in its FERC Gas Tariff, Fifth Revised Volume No. 1, on July 15, 1994, in compliance with a Stipulation and Agreement approved by the Commission in Docket Nos. RP91–203, et al., which included a revision in its rates for its Rate Schedule LMS–MA service, effective September 1, 1993. Granite State proposes in its filing to track the change in the Tennessee rate effective September 1, 1994, rather than retroactively.

According to Granite State, copies of its filing were served on its Rate Schedule LMS customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., 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 or protests should be filed on or before September 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23054 Filed 9–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT94–23–000]

Great Lakes Gas Transmission Limited Partnership; Proposed Changes in FERC Gas Tariff

September 13, 1994.

Take notice that on September 8, 1994, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

First Revised Sheet No. 28
First Revised Sheet No. 64
First Revised Sheet No. 65
First Revised Sheet No. 66
First Revised Sheet No. 67

Great Lakes states that the above tariff sheets reflect changes to its Transportation Services Request Form and other changes brought about by the Commission's Order No. 566 issued on June 17, 1994, in Docket No. RM94–6–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before September 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23055 Filed 9–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–1–65–000]

Jupiter Energy Corporation; Proposed Changes in FERC Gas Tariff

September 13, 1994.

Take notice that Jupiter Energy Corporation (Jupiter Energy) on August 31, 1994, tendered for filing the following sheets of its FERC Gas Tariff, Original Volume No. 1:

Eighth Revised Sheet No. 4A
Eighth Revised Sheet No. 5A
Eighth Revised Sheet No. 6A

Jupiter Energy states that the filed tariff reflects revision, pursuant to Section 154.38(d)(6) of the Commission's regulations, of Jupiter Energy's Annual Charge Adjustment (ACA) surcharge. The new surcharge rate is $0.24 per Mcf.

Jupiter Energy proposes an effective date of October 1, 1994.

Jupiter Energy states that copies of the filing have been served on the Company's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Jupiter Energy's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23056 Filed 7–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–1–25–000]

Mississippi River Transmission Corporation; Proposed Change in FERC Gas Tariff

September 13, 1994.

Take notice that on August 31, 1994, Mississippi River Transmission Corporation (MRT) tendered for filing Sixth Revised Sheet No. 10 and First Revised Sheet No. 232 to its FERC Gas Tariff Third Revised Volume No. 1.

MRT states that the purpose of the instant filing is to adjust the currently effective ACA charge in its rates to the new FERC approved surcharge of $.0023 per MMBtu effective October 1, 1994, in accordance with Section 23 of its FERC Gas Tariff.

MRT states that a copy of the filing is being mailed to each of MRT's customers and the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23057 Filed 9–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–2–16–001]

National Fuel Gas Supply Corporation; Tariff Filing

September 13, 1994.

Take notice that on September 6, 1994, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Sixth Revised Sheet No. 5 and Substitute Fifth Revised Sheet No. 6, with a proposed effective date of October 1, 1994.

National states that these tariff sheets are submitted to adjust the Current Rate to reflect the $.0002 decrease in the Annual Charge Adjustment unit surcharge authorized by the Commission for Fiscal 1995.

National states that a copy of this filing was posted pursuant to Section 154.16 of the Commission's Regulations, and that copies of this filing were served upon the company's jurisdictional customers and upon the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C., 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protest should be filed on or before September 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23058 Filed 9–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–353–001]

Southern Natural Gas Company; Proposed Changes in FERC Gas Tarriff

September 13, 1994.

Take notice that on September 9, 1994, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheet to be effective September 1, 1994:

First Substitute Original Sheet No. 403g

Southern states that the purpose of this filing is to make a minor clarification to this form of pipeline balancing agreement in compliance with the Letter Order issued in this proceeding on September 2, 1994. Southern has requested all waivers necessary to make this sheet effective September 1, 1994.

Southern states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211. All such protests should be filed on or before September 20, 1994. Protests will not be considered by the Commission in determining the parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23059 Filed 9–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–1–115–000]

Sumas International Pipeline Inc.; Proposed Changes in FERC Gas Tariff

September 13, 1994.

Take notice that on September 1, 1994, Sumas International Pipeline Inc., (SIPI) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets, with an effective date of October 1, 1994:

Third Revised Sheet No. 4

SIPI states that the above tariff sheet reflects the new ACA unit surcharge rate of $.0024 per Mcf which is equivalent to $.0023 per MMBtu on SIPI's system.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol 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 or protests should be filed on or before September 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23060 Filed 9–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–395–000]

Tennessee Gas Pipeline Company; Rate Filing

September 13, 1994.

Take notice that on September 9, 1994, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, First Revised Sheet No. 25, First Revised Sheet No. 159, and First Revised Sheet No. 159A.

Tennessee states that the purpose of this filing is to comply with the Commission's Fifth Order on Compliance Filing and Fourth Order on Rehearing in Tennessee's restructuring proceeding. 68 FERC 61,001 at 61,002 (1994). Tennessee requests an effective date for the above-referenced sheets of October 1, 1994.

Tennessee states that in the Fifth Tennessee Restructuring Order, the Commission denied Tennessee's request for rehearing regarding the crediting of revenues from Extended Receipt and Delivery Services because it felt that the services were essentially interruptible in nature. However, the Commission invited Tennessee to make a limited Section 4 filing to alter its Extended Receipt and Delivery Services in order to make them true firm services. The instant filing would require that shippers desiring Extended Receipt or Delivery Service reserve and pay for such capacity for at least three days. Thus Tennessee states that the proposed sheets comply with the Commission's holdings in *Panhandle Eastern Pipeline Co.* 65 FERC 61,130 (1993) and *ANR Pipeline Co.* 64 FERC 61,140 (1993) as required by the Fifth Restructuring Order.

Tennessee requests a waiver of the Commission's 30 day prior notice requirements in order that the proposed tariff sheets may go into effect on October 1, 1994. Implementation at this time will allow Tennessee to gain experience in scheduling the new Extended Receipt and Delivery Service prior to increased system demands that will result from colder weather. While Tennessee does not believe any additional waivers are necessary, Tennessee respectfully requests that the Commission grant any waivers it deems necessary for acceptance of this filing.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commission.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before September 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23061 Filed 9–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–375–001]

Texas Gas Transmission Corporation; Filing

September 13, 1994.

Take notice that on September 7, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing supporting schedules and working papers in Docket No. RP94–375, et al. Texas Gas states that this filing is being made to supplement a filing made on August 30, 1994, and noticed as Docket No. RP94–375–000. That filing described Schedules 1 through 10, which were supposed to be attached in support of Account No. 191 costs to be direct billed by Texas Gas. Therefore, Texas Gas is submitting Schedules 1 through 10 to correct the inadvertent error caused by not attaching the schedules to its filing made on August 30, 1994.

Texas Gas states that copies of the letter of transmittal and attachments are being mailed to all those receiving the August 30, 1994, filing, which included Texas Gas's affected former jurisdictional sales customers and interested state commissions, as well as to all parties on the service list in Docket No. RP94–125.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., in accordance with Rule 211 of the Commission's Rules and Regulations. All such protests should be filed on or before September 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23062 Filed 9–16–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–1–29–000]

Transcontinental Gas Pipe Line Corporation; Tariff Filing

September 13, 1994.

Take notice that Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing on August 31, 1994, Tenth Revised Sheet No. 60 to its FERC Gas Tariff, Third Revised Volume No. 1. Such tariff sheet is proposed to be effective October 1, 1994.

The purpose of the filing is to reflect a decrease in the Annual Charge Adjustment (ACA) Charge in the commodity portion of TGPL's transportation rates. Pursuant to Order No. 472, the Commission has assessed TGPL its ACA unit rate of $0.0024/Mcf ($0.0023/dt on TGPL's system) for the annual period commencing October 1, 1994.

TGPL states that copies of the filing are being mailed to affected customers and interested State Commissions.

In accordance with the provisions of Section 154.16 of the Commission's Regulations, copies of the filing are available for public inspection, during regular business hours, in a convenient form and place at TGPL's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23063 Filed 9–16–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $52,092.73, plus accrued interest, in refined petroleum overcharges obtained by the DOE under the terms of a Remedial Order issued to Sunset Boulevard Car Wash (Sunset) Case No. LEF–0112. The OHA has determined that the funds will be distributed in accordance with the provisions of 10 CFR Part 205, Subpart V and 15 U.S.C. 4501, the Petroleum Overcharge Distribution and Restitution Act (PODRA).

DATES AND ADDRESSES: Applications for Refund must be filed in duplicate, addressed to Sunset Boulevard Car Wash Special Refund Proceeding and sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications must reference Case Number LEF–0112 and be postmarked on or before June 1, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director Kim L. Hargrove, Staff Attorney Office of Hearings and Appeals 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–2390

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the procedures that the DOE has formulated to distribute to eligible claimants $52,092.73, plus accrued interest, obtained by the DOE under the terms of a Remedial Order that the DOE issued to Sunset Boulevard Car Wash (Sunset) on October 22, 1980. Under the Remedial Order, Sunset was found to have violated the Federal petroleum price and allocation regulations involving the sale of refined petroleum products between August 1, 1979 and January 27, 1980 (the Audit period).

The OHA will distribute the Remedial Order funds in a two stage refund proceeding. Purchasers of Sunset motor gasoline will have an opportunity to submit refund applications in the first stage. Refunds will be granted to applicants who satisfactorily demonstrate they were injured by the pricing violations and who document the volume of gasoline they purchased from Sunset during the audit period. In the event that money remains after all first stage claims have been disposed of, the remaining funds will be disbursed in accordance with the provisions of 15 U.S.C. 4501, the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA).

Applications for Refund must be postmarked on or before June 1, 1995. Instructions for the completion of refund applications have been set forth in Section IV of the Decision immediately following this notice. Refund applications should be mailed to the address listed at the beginning of this notice.

Unless labelled as "confidential", all submissions must be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Date: September 12, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Sunset Boulevard Car Wash
Date of Filing: July 20, 1993
Case Number: LEF–0112

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund proceedings. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

In this Decision and Order, we consider a Petition for Implementation of Special Refund Procedures filed by ERA on July 20, 1993. In that Petition, ERA specifically requests that we formulate refund procedures to disburse funds that had been remitted to DOE by Sunset Boulevard Car Wash (Sunset). The funds at issue in that Petition were obtained through a Remedial Order (the Order) issued by our Office on October 22, 1980.

Under the terms of the Order, Sunset remitted $52,092.73 to the DOE to remedy pricing violations which Sunset committed between August 1, 1979 and January 27, 1980.[1] These funds are being held in an escrow account established with the Treasury pending a determination of their proper distribution. The present Decision and Order sets forth final procedures for the distribution of those funds to qualified purchasers of Sunset's refined products.

I. Jurisdiction and Authority

The general guidelines that govern OHA's ability to formulate and implement a plan to distribute refunds are set forth at 10 CFR part 205, subpart V. These procedures apply in situations where DOE cannot readily identify the persons who were injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of subpart V and the authority of OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981) and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

II. Background

The facts alleged in the Order were undisputed. Sunset was a "retailer" of motor gasoline as that term has been defined at 10 CFR 212.31 and was therefore subject to the provisions of 10 CFR part 210 and 10 CFR part 212, subpart F. The Order states that from August 1, 1979 to January 27, 1980 (the audit period), Sunset charged prices higher than those permitted by 10 CFR 212.93(a)(2); levied a cents-per-gallon fee for services associated with the sale of motor gasoline in violation of 10 CFR 210.62(d)(1) and refused to make its records available for inspection in violation of 10 CFR 210.92(b).

Sunset was ordered to reduce its prices for motor gasoline by specified amounts until a sufficient volume of gasoline had been sold at reduced prices to remedy the violations.[2] After decontrol, the Order was modified to require direct monetary restitution to the Treasury instead. See *Sunset Boulevard Car Wash*, 20 FERC ¶ 62,319 at 63,537 (*Sunset*) (1982). Under the terms of the modified Order (the MO), Sunset was required to disgorge and remit to DOE the violation amount and the profits it had acquired as a result of its violation of the aforementioned provisions of the pricing regulations.

Sunset objected to the remedial provisions of the MO at every available tier of administrative and judicial review. As a result, the Federal Energy Regulatory Commission (FERC) affirmed the MO on August 12, 1982. When Sunset renewed its objections in proceedings before the United States District Court for the Central District of California, the District Court affirmed the MO. Finally, on March 9, 1993, the Temporary Emergency Court of Appeals definitively disposed of Sunset's objections. *Bush* v. *U.S.*, 989 F.2d 509 (Em. App. 1993).

III. The Proposed Decision and Order

On November 24, 1993, we issued a Proposed Decision and Order (PDO) establishing tentative procedures to distribute the funds that Sunset had remitted to DOE pursuant to the MO. We proposed implementing a two stage refund proceeding and we stated that purchasers of Sunset motor gasoline would be provided an opportunity to submit refund applications in the first stage. In the event funds remained after all first stage claims had been considered, we stated that the remaining funds would be disbursed in the second stage in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (15 U.S.C. 4501) (PODRA).

We provided a 30 day period for the submission of comments concerning the proposed procedures. However, we have received no comments since the PDO was published in the **Federal Register** more than 30 days ago. The proposed procedures will therefore be adopted in the same form in which they were originally outlined. Set forth below are the specific considerations that will guide our evaluation of refund applications during the first stage, as well as, the provisions governing distribution of any remaining funds in the second stage proceeding.

IV. First Stage Refund Procedures

Refund applications submitted in the Sunset special refund proceeding will be evaluated in exactly the same manner as applications submitted in other refined product proceedings. In those proceedings, we often adopt rebuttable presumptions which relate to pricing violations and injury. Such a policy reflects our belief that adoption of these presumptions permits applicants to participate in refund proceedings in larger numbers by avoiding the need to incur inordinate expense; and facilitates

[1] Sunset remitted a total of $52,092.73. The PDO inadvertently stated that Sunset remitted $52,093.73.

[2] The Order imposed no sanctions upon Sunset as a result of its failure to make its records available in accordance with 10 CFR 210.92(b). See Remedial Order at 1 and 7

our consideration of first stage refund applications. 10 CFR 205.282(e). For those reasons, we have adopted similar presumptions in the present proceeding.

(1) Calculating the Refund

We have presumed that the pricing violations were dispersed equally throughout Sunset's motor gasoline sales during the audit period. We therefore proposed that each applicant's potential refund should be calculated on a volumetric basis. Under the volumetric approach, refunds are calculated by multiplying the gallons of refined product each applicant purchased by the per gallon refund amount (volumetric) established for this proceeding, plus accrued interest. Applicants believing they were disproportionately overcharged by the pricing violations may present documentation which supports that claim. Those who succeed in showing they were disproportionately overcharged by Sunset will be eligible to receive refunds calculated at a higher volumetric.

The volumetric for this proceeding has been set at $.0868 per gallon. This figure was obtained by dividing the remedial order funds available for distribution by the volume of gasoline Sunset is believed to have sold during the audit period.[3]

(2) Eligibility for a Refund

In order to be eligible to receive a refund in this proceeding, each applicant must (1) document the volume of motor gasoline it purchased during the audit period; and (2) demonstrate that it was injured by Sunset's overcharges. The threshold requirement for any applicant is documenting the volume of product it purchased. This requirement is typically satisfied when the applicant successfully demonstrates ownership of the business for which the refund is sought and submits documentation which supports the volume claimed in its refund application.

The injury showing, however, is a potentially more difficult requirement for applicants to satisfy, especially those seeking smaller refund amounts. This is true because an applicant must demonstrate that it was forced to absorb Sunset's overcharges. Our cases have often stated that an applicant accomplishes this by demonstrating that it maintained a "bank" of unrecovered product costs and showing that market conditions would not permit the applicant to pass through those increased costs. See, *Quintana Energy Corp.*, 21 DOE ¶ 85,032 at 88,117 (1991).

Unless simplified application procedures were provided, we recognized that the cost to the applicant of gathering evidence of injury to support a relatively small refund claim could exceed the expected refund and thereby cause some injured parties to be denied an opportunity to obtain a refund. Moreover, simplified procedures were needed to minimize the burden that would be placed on this Office if we found it necessary to analyze a detailed injury showing for large numbers of small refund applications. In view of these difficulties, we proposed adopting a number of injury presumptions which simplify and streamline the refund process.

(3) Presumptions of Injury

Each presumption of injury turns on the category of applicant. Set forth below is the presumption of injury that has been adopted for each class of applicant likely to submit a refund application in this proceeding.

Small-claim Presumption. We have adopted a small claim presumption of injury for resellers, retailers and refiners whose claim is $10,000 or less, exclusive of interest. A small claim threshold of $10,000 has been adopted, even though we established a lower threshold amount of $5,000 in many prior proceedings. See, e.g., *Gulf Oil Corporation*, 16 DOE ¶ 85,381 (1987)(establishing a $5,000 threshold). The $10,000 threshold is more appropriate here because the volumetric for this proceeding is significantly higher than the volumetric set in Gulf and in most other proceedings. *Id.* If we were to adopt a lower threshold amount for this proceeding, then the high volumetric would increase substantially the number of very small firms that would be burdened with the requirement to make a detailed injury showing before they become eligible to receive their full allocable share.

The small claim presumption of injury for this proceeding, exempts applicants whose claims are $10,000 or less, exclusive of interest, from the requirement to prove injury. Such an applicant need only document the volume of motor gasoline he or she purchased from Sunset during the audit period in order to be eligible to receive a full refund. See *Enron Corporation*, 21 DOE ¶ 85,323 at 88,957 (1991).

Mid-range Presumption. Mid-range applicants; that is, applicants seeking refunds in excess of $10,000 but less than $50,000, excluding interest, are eligible to receive 40 percent of their allocable share without proving injury. Like small-claim applicants, these applicants will only be required to document the volume of Sunset gasoline they purchased during the audit period to be eligible to receive refunds. See *Shell*, 17 DOE at 88,406.

End-user Presumption. We have presumed that end-users of petroleum products whose businesses were unrelated to the petroleum industry and were not subject to the regulations promulgated under the Emergency Petroleum Price and Allocation Act of 1973 (EPAA), 15 U.S.C. §§ 751–760h, were injured by Sunset's pricing violations. Unlike regulated firms, end-users were not subject to price controls during the audit period. Moreover, these firms were not required to keep records that justified selling price increases by reference to cost increases. An analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services is beyond the scope of a special refund proceeding. See *American Pacific International, Inc.*, 14 DOE ¶ 85,158 at 88,294 (1986). End-users seeking refunds in this proceeding will therefore be presumed to have been injured by Sunset's pricing violations. In order to receive a refund, end-user applicants need only document the volume of Sunset product they purchased during the audit period. Meritorious applicants are eligible to receive their full allocable share. See *Shell*, 17 DOE at 88,406.

Refunds in Excess of $50,000 and Other Applicants. Applicants seeking refunds in excess of $50,000, excluding interest, will be required to submit detailed evidence of injury. These applicants must show that the overcharges were absorbed, not passed through to their customers. They will therefore be unable to rely upon injury presumptions utilized in many refined product refund cases. *Id.*

We do not anticipate that other categories of applicants, such as, regulated firms, cooperatives, indirect purchasers or spot purchasers, would have obtained products from Sunset. Such applicants may nonetheless submit refund applications if they purchased motor gasoline from Sunset during the audit period. Any such applicants must demonstrate that they purchased products from Sunset during the audit period and show they were injured as a result of their purchases to

[3] In the absence of precise figures indicating the amount of motor gasoline Sunset sold during the audit period, we estimated Sunset's total sales using the best available data. Based on sales of 200,000 gallons per month for 6 months, we believe Sunset sold 1,200,000 gallons of gasoline during the audit period. This figure will be used to calculate the volumetric refund amount unless the refund applications submitted pursuant to this Decision and Order indicate that our estimate is inaccurate. In the event the estimate proves to be inaccurate, it may be necessary to reestimate the volumetric.

be eligible to receive a refund in this proceeding. Regulated firms and cooperatives are exempt from the requirement to show injury. They must, however, show that they will pass through to their customers any refunds they receive.

(4) How to Apply for a Refund

To apply for a refund from the Sunset settlement fund, an applicant must submit an Application for Refund containing all of the following information:

(1) The Applicant's name; the current name and address of the business for which the refund is sought; the name and address during the refund period of the business for which the refund is sought; the taxpayer identification number; a statement specifying whether the applicant is an individual, corporation, partnership, sole proprietorship or other business entity; the name, title, and telephone number of a person to contact for additional information; and the name and address of the person who should receive any refund check.[4] If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify those names.

(2) The applicant should specify the source of its gallonage information. In calculating its purchase volumes, an applicant should use actual records from the settlement period, if available. If these records are not available, the applicant may submit estimates of its gasoline purchases, but the estimation methodology must be reasonable and must be explained.

(3) A statement indicating whether the applicant or a related firm has filed, or has been authorized to file on its behalf, any other application in this refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(4) If the applicant is or was in any way affiliated with the consenting firm, in this case Sunset Boulevard Car Wash, the applicant should explain this affiliation, including the time period in which it was affiliated. If not, a statement that the applicant was not affiliated with the consenting firm.

(5) The statement listed below, provided it has been signed by the applicant or a responsible official of the firm filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the Federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and should clearly refer to the appropriate proceeding name (Sunset Boulevard Car Wash) and case number (LEF–0112). Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish this information to be publicly disclosed, the applicant must submit an original application, clearly designated "confidential", containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked no later than June 1, 1995, and sent to: Sunset Boulevard Car Wash, LEF–0112, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

(5) Minimal Amount Requirement

Only claims for at least $15 in principal will be processed. This minimum has been adopted in refined product refund proceedings because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those instances. See *Mobil Oil Corporation*, 13 DOE ¶ 85,339 (1985). Using the volumetric methodology, an applicant must have purchased at least 173 gallons of Sunset motor gasoline in order for its claim to be considered in this proceeding.

(6) Additional Information

OHA reserves the authority to require additional information before granting any refund in these proceedings. Applications lacking the required information may be dismissed or denied.

(7) Refund Applications Filed by Representatives

OHA reiterates its policy to closely scrutinize applications filed by filing services. Applications submitted by a filing service should contain all of the information indicated in this final Decision and Order. Strict compliance with the filing requirement as specified in 10 CFR 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant, will be required.

(8) Filing Deadline

The deadline for filing an Application for Refund is June 1, 1995.

V. Second Stage Refund Procedures

Any funds that remain after all first stage claims have been decided will be distributed in accordance with the provisions of PODRA, 15 U.S.C. 4501–07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to OHA, and any funds that OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That:

Applications for Refund from the funds remitted to the Department of Energy by Sunset Boulevard Car Wash, pursuant to the Remedial Order finalized on October 22, 1980, may now be filed.

Dated: September 12, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–23127 Filed 9–16–94; 8:45 am]

BILLING CODE 6450–01–P

[4] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant who does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications. It is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 CFR part 205, Subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

Southwestern Power Administration

[Rate Order No. SWPA–29]

Integrated System Power Rates; Order Approving an Extension of Power Rates on an Interim Basis

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of an Extension of Power Rates—Integrated System.

SUMMARY: The Deputy Secretary of Energy, acting under Amendment No. 3 to Delegation Order No. 0204–108, dated November 10, 1993, 58 FR 59717, and pursuant to the implementation authorities in 10 CFR 903.22(h) and 903.23(a), has approved Rate Order No. SWPA–29 which extends the existing power rates for the Integrated System. This is an interim rate action effective October 1, 1994, and extending for a

period of one year through September 30, 1995.

FOR FURTHER INFORMATION CONTACT: George C. Grisaffe, Assistant Administrator, Office of Administration and Rates, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101 (918) 581–7419.

SUPPLEMENTARY INFORMATION: The existing rate schedules for the Integrated System were approved on a final basis by the Federal Energy Regulatory Commission on September 18, 1991, for the period ending September 30, 1994. On June 14, 1994, the Southwestern Power Administration (Southwestern) published notice in the **Federal Register**, 59 FR 30583, of its intention to seek a one-year extension of the existing power rate for the Integrated System and provided for a 15-day comment period. No comments were received. 10 CFR 903.22(h) and 903.23(a) provide implementation authority for such interim extension to the Deputy Secretary.

Following review of Southwestern's proposal within the Department of Energy, I approved, Rate Order No. SWPA–29, on August 29, 1994 which extends the existing Integrated System rates for one year beginning October 1, 1994.

Issued at Washington, D.C., this 29th day of August 1994.

William H. White,

Deputy Secretary.

Order Approving Extension of Power Rates on an Interim Basis

August 29, 1994.

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, for the Southwestern Power Administration were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective December 14, 1983, 48 FR 55664, the Secretary of Energy delegated to the Deputy Secretary of Energy on a non-exclusive basis the authority to confirm, approve and place into effect on an interim basis power and transmission rates, and delegated to the Federal Energy Regulatory Commission (FERC) on an exclusive basis the authority to confirm, approve and place in effect on a final basis, or to disapprove power and transmission rates. Amendment No. 1 to Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744, revised the delegation of authority to confirm, approve and place into effect on an interim basis power and transmission rates by delegating such authority to the Under Secretary of Energy rather than the Deputy Secretary of Energy. This delegation was reassigned to the Deputy Secretary of Energy by Department of Energy (DOE) Notice 1110.29, dated October 27, 1988, and clarified by Secretary of Energy Notice SEN–10–89, dated August 3, 1989, and subsequent revisions. By Amendment No. 2 to Delegation Order No. 0204–108, effective August 23, 1991, 56 FR 41835, the Secretary of the Department of Energy revised Delegation Order No. 0204–108 to delegate to the Assistant Secretary, Conservation and Renewable Energy, the authority which was previously delegated to the Deputy Secretary in that Delegation Order. By Amendment No. 3 to Delegation Order No. 0204–108, effective November 10, 1993, the Secretary of Energy redelegated to the Deputy Secretary of Energy, the authority to confirm, approve and place into effect on an interim basis power and transmission rates of the Power Marketing Administrations. This rate order is issued by the Deputy Secretary pursuant to said Amendment to Delegation Order No. 0204–108.

This is an interim rate extension. It is made pursuant to the authorities as implemented in 10 CFR 903.22(h) and 903.23(a).

Background

Southwestern Power Administration (Southwestern) currently has marketing responsibility for 2.2 million kilowatts of power from 24 multiple-purpose reservoir projects, with power facilities constructed and operated by the U.S. Army Corps of Engineers, generally in all or portions of the states of Arkansas, Kansas, Louisiana, Missouri, Oklahoma and Texas. The Integrated System, composed of 22 of the projects, is interconnected through a transmission system presently consisting of 138- and 161-kV high-voltage transmission lines, 69-kV transmission lines, and numerous bulk power substations and switching stations. In addition, contractual transmission arrangements provide for integration of other projects into the system.

The remaining two projects, Sam Rayburn Dam and Robert Douglas Willis, are isolated hydraulically and electrically from the Southwestern transmission system, and their power is marketed under separate contracts through which the customer purchases the entire power output of the project at the dam. A separate Power Repayment Study (PRS) is prepared for each isolated project, and each has a special rate which is not a part of this study. The existing rate schedules for the Integrated System were confirmed and approved on a final basis by the FERC on September 18, 1991 for the period October 1, 1990 through September 30, 1994. The FY 1994 Integrated System PRSs indicate the need for a minor rate adjustment of $726,051 annually, or 0.8 percent.

Pursuant to implementing authority in 10 CFR 903(h) and 903.23(a), the Deputy Secretary of Energy may extend a FERC-approved rate on an interim basis. The Administrator, Southwestern, published notice in the **Federal Register** on June 14, 1994, 59 FR 30583, announcing a 15-day period for public review and comment concerning the proposed interim rate extension. In addition, informal meetings were held with customer representatives on January 12, 1994; April 4, 1994; and May 6, 1994. Written comments were accepted through June 29, 1994. No comments on the proposed interim extension were received.

Discussion

The existing Integrated System rates are based on the FY 1990 PRS. PRSs have been completed on the Integrated System each year since approval of the existing rates. Rate changes indicated by the PRSs during that period indicated the need for a minor rate increase or decrease. Since the revenue changes reflected by the PRSs were within the plus-or-minus two percent Rate Adjustment Threshold established by Southwestern's Administrator on June 23, 1987, these rate adjustments were deferred in the best interest of the government and provided for the next year's PRS to determine the appropriate level of revenues needed for the next rate period.

The FY 1994 PRS indicates the need for a minor rate increase of 0.8 percent. As has been the case since the existing rates were approved, the FY 1994 rate adjustment needed falls within Southwestern's plus-or-minus two percent Rate Adjustment Threshold and would normally be deferred. However, the existing rates expire on September 30, 1994. Consequently, Southwestern proposes to extend the existing rates for a one-year period ending September 30, 1995, on an interim basis under the implementation authorities noted in 10 CFR 903.22(h) and 903.23(a).

Southwestern continues to make significant progress toward repayment of the Federal investment in the Integrated System. Through FY 1993, status of repayment for the Integrated System was $288,259,891, which

represents approximately 30 percent of the $971,634,103 Federal investment for the Integrated System. The status has increased almost 47 percent since the existing rates were placed in effect.

Information regarding this rate extension, including studies and other supporting material, is available for public review and comment in the offices of Southwestern Power Administration, One West Third Street, Tulsa, Oklahoma 74101.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby extend on an interim basis, for the period of one year, effective October 1, 1994, the current FERC-approved Integrated System Rates for the sale of power and energy.

Issued at Washington, DC, August 29, 1994.

William H. White,

Deputy Secretary.

[FR Doc. 94–23124 Filed 9–16–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[NPDES No. FLG830000; FRL–5073–3]

Reissuance of the National Pollutant Discharge Elimination System (NPDES) General Permit for Petroleum Fuel Contaminated Ground/Storm Waters in the State of Florida

AGENCY: Environmental Protection Agency.

ACTION: Notice of Reissuance of a NPDES General Permit to the State of Florida.

SUMMARY: The Regional Administrator, EPA, Region IV intends to reissue the National Pollutant Discharge Elimination System (NPDES) General Permit No. FLG830000 to facilities within the political boundary of the State of Florida. This proposed reissued NPDES general permit proposes effluent limitations, prohibitions, reporting requirements and other conditions on facilities which discharge uncontaminated groundwater associated with dewatering or treated groundwater and/or storm water incidental to the groundwater cleanup operation which have been contaminated by automotive gasoline, aviation and/or diesel fuels. This permit authorizes discharges from facilities currently located in and discharging to surface waters within the political boundary of the State of Florida, and any new treatment facilities placed in operation during the term of this permit.

Except for facilities meeting the conditions of Part I.3, written notice of intent to be covered by the reissued NPDES general permit shall be provided to the Permit Issuing Authority prior to initiation of any discharge to waters of the United States. For facilities that must submit a Notice of Intent (NOI), coverage by this NPDES general permit is authorized upon receipt of written notification of coverage from the Permit Issuing Authority. The proposed reissued permit contains limitations on the amounts of pollutants allowed to be discharged and was drafted in accordance with the provisions of the Clean Water Act (33 U.S.C. 1251 *et seq.*) and other lawful standards and regulations. The pollutant limitations and other permit conditions are tentative and open to comment from the public.

ADDRESSES: Persons wishing to comment upon or object to any aspects of a specific permit reissuance or wishing to request a public hearing, are invited to submit same in writing within thirty (30) days of this notice to the Office of Public Affairs, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365, Attention: Ms. Lena Scott, Public Notice Coordinator. Pursuant to 40 CFR 124.13, any person who believes that any permit condition is inappropriate must raise all reasonably ascertainable issues and position, by the close of the comment period. The public notice number and NPDES number should be included in the first page of comments. All comments received within the 30-day period will be considered in the formulation of a final determination regarding the reissuance of this NPDES general permit. Also, within the 30-day period any interested person may request a public hearing. Where there is a significant degree of public interest in the proposed general permit reissuance, the EPA Regional Administrator will schedule and hold a public hearing which would be formally announced in accordance with 40 CFR 124.10 and 124.12.

After consideration of all written comments and the requirements and policies in the Act and appropriate regulations, the EPA Regional Administrator will make a determination regarding the reissuance of this NPDES general permit. If the determination is substantially unchanged from that announced by this notice, the EPA Regional Administrator will so notify all persons submitting written comments. If the determination is substantially changed, the EPA Regional Administrator will issue a public notice indicating the revised determination. A formal hearing is available to challenge any NPDES permit issued under 40 CFR 124.14 except for a general permit. Persons affected by a general permit may not challenge the conditions of a general permit as a right in further agency proceedings.

They may instead either challenge the general permit in court, or apply for an individual permit under 40 CFR 122.21 as authorized at 40 CFR 122.28 and then request a formal hearing on the issuance or denial of an individual permit. The administrative record, including draft NPDES general permit, fact sheet, state certification, comments received, and additional information are available by writing the EPA, Region IV, or for review and copying at 345 Courtland St., NE., Atlanta, Georgia 30365, between the hours of 8:15 a.m. and 4:30 p.m., Monday through Friday. Copies will be provided at a nominal charge per page. Additional information concerning the permit may be obtained at the address and during the hours noted above: Ms. Lena Scott, Public Notice Coordinator, 404/347–3004.

FOR FURTHER INFORMATION CONTACT: Larry Cole, Environmental Engineer, Water Permits and Enforcement Branch, Water Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365, (404) 347–3012 ext. 2948.

SUPPLEMENTARY INFORMATION:

I. Introduction

On Thursday, August 25, 1988 (53 FR 32442), EPA, Region IV proposed the issuance of the draft NPDES General Permit. During the 30-day comment period, a request for an extension of the comment period was received, and on Tuesday, October 25, 1988 (53 FR 43035), the comment period was extended to November 15, 1988. On Monday, July 17, 1989 (54 FR 29986), EPA, Region IV issued the Final NPDES General Permit for Petroleum Fuel Contaminated Ground/Storm Waters in the State of Florida.

On Friday, February 22, 1991 (56 FR 7379), EPA, Region IV published a notice of the proposed modification to the NPDES General Permit for Petroleum Fuel Contaminated Ground/Storm Waters in the State of Florida (56 FR 7379). On Thursday, August 29,

1991 (56 FR 42736), the final modification was issued.

Patrick M. Tobin,

Deputy Regional Administrator.

General Permit to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*; the "Act"),

Discharges of uncontaminated groundwater from dewatering activities, treated groundwater and incidental storm water, which are contaminated with gasoline or aviation fuel, are authorized to discharge to waters of the United States within the State of Florida in accordance with effluent limitations, monitoring requirements and other conditions set forth herein. This draft permit consists of Part I, Part II, Part III, Part IV, and Part V. This is immediately followed by a fact sheet which goes into detail concerning the reissuance of this permit. This permit shall become effective on _____. This permit and the authorization to discharge shall expire at midnight, Eastern Daylight Savings Time, on _____, 19_____.

Allan E. Antley,

Associate Division Director, Water Management Division.

Part I

A. Effluent Limitations and Monitoring Requirements

Existing Sources and New Dischargers.

1. During the period beginning on the effective date of the permit and lasting through the term of this permit, the permittee is authorized to discharge treated groundwater and storm water that has been contaminated by Automotive Gasoline. It is anticipated that these contaminated waters will be treated by air stripping, followed by activated carbon adsorption, if necessary, or equivalent treatment to meet the following effluent limitations.

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent characteristic	Discharge limitations		Monitoring requirements	
	Daily avg	Daily Max	Measurement frequency	Sample type
Flow, MGD	Report	Report	Continuous	Flowmeter.
Benzene, µg/l	.....	1.0	1/month	Grab.
*Total lead, µg/l	.....	30.0	1/month	Grab.
pH, standard units	.....	See below	.....	
Acute whole effluent toxicity	.....	.....	See part V	Grab.

*Monitoring for this parameter is required only when contamination results from leaded fuel.

An LC_{50} of 100% or less in a test of 96 hours duration or less will constitute a violation of Florida Administrative Code (FAC) (July 11, 1993) § 17–4.244(3)(a) and the terms of this permit. The testing for this requirement must conform with Part V of this permit.

For fresh waters and coastal waters, the pH of the effluent shall not be lowered to less than 6.0 units for fresh waters, or less than 6.5 units for marine waters, or raised above 8.5 units, unless the permittee submits natural background data in the NOI request confirming a natural background pH outside of this range. If natural background of the receiving water, as revealed by sampling data from the permittee in the NOI request, is determined to be less than 6.0 units for fresh waters, or less than 6.5 units in marine waters, the pH shall not vary below natural background or vary more than one (1) unit above natural background for fresh and coastal waters. If natural background of the receiving water, as revealed by sampling data from the permittee in the NOI request, is determined to be higher than 8.5 units, the pH shall not vary above natural background or vary more than one (1) unit below natural background of fresh and coastal waters. The acceptable pH range will be included in the letter granting permit coverage and on the DMR. The pH shall be monitored once every month by grab sample, or continuously with a recorder. (See item I.B.4).

In accordance with FAC § 17–302.500(1)(a–c)(4–25–93), the discharge shall at all times be free from floating solids, visible foam, turbidity, or visible oil in such amounts as to form nuisances on surface waters.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): Nearest accessible point after final treatment but prior to actual discharge or mixing with the receiving waters.

A. Effluent Limitations and Monitoring Requirements

Existing Sources and New Dischargers.

2. During the period beginning on the effective date of the permit and lasting through the term of this permit, the permittee is authorized to discharge treated groundwater and storm water that has been contaminated by Aviation Gasoline, Jet Fuel or Diesel.

It is anticipated that these contaminated waters will be treated by air stripping, followed by activated carbon adsorption, if necessary, or equivalent treatment to meet the following effluent limitations. Such discharges shall be limited and monitored by the permittee as specified below:

Effluent characteristic	Discharge limitations		Monitoring requirements	
	Daily average	Daily maximum	Measurement frequency	Sample type
Flow, MGD	Report	Report	Continuous	Flowmeter.
Benzene, µg/l	.....	1.0	1/month	Grab.
Naphthalene, µg/l	.....	100.0	1/month	Grab.
Total lead, µg/l [1]	.....	30.0	1/month	Grab.
pH, standard units (SUs)	.....	(2)	(2)	

Effluent characteristic	Discharge limitations		Monitoring requirements	
	Daily average	Daily maximum	Measurement frequency	Sample type
Acute whole effluent toxicity		(3)	(3)	Grab.

[1] Monitoring for this parameter is required only when contamination results from leaded fuel.
[2] See Part I.A.1.
[3] See Part V.

An LC_{50} of 100% or less in a test of 96 hours duration or less will constitute a violation of FAC (July 11, 1993) § 17–4.244(3)(a) and the terms of this permit. The testing for this requirement must conform with Part V of this permit.

The permittee shall comply with the same pH requirements for this Part I.A.2 as in Part I.A.1.

The pH shall be monitored once every month by grab sample, or continuously with a recorder. (See item I.B.4).

In accordance with FAC § 17–302.500(1)(a-c), the discharge shall at all times be free from floating solids, visible foam, turbidity, or visible oil in such amounts as to form nuisances on surface waters.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): Nearest accessible point after final treatment but prior to actual discharge or mixing with the receiving waters.

A. Effluent Limitations and Monitoring Requirements

3. During the period beginning on the effective date of the permit and lasting through the term of this permit, the permittee is authorized to discharge produced groundwater from any noncontaminated site activity which discharges by a point source to waters of the United States, only if the reported values for the parameters listed below do not exceed any of the screening values below. Before discharge of produced groundwater can occur from such sites, analytical tests on samples of the proposed discharge water shall be performed to determine if contamination exists from other sources.

Minimum reporting requirements for all produced groundwater dischargers.

The effluent shall be sampled at the final effluent before the commencement of discharge and once every six months for the life of the project to maintain continued coverage under this general permit. The effluent shall be sampled for the parameters listed below and the analytical results obtained shall be submitted to EPA at the address given in Part III.A.

Parameter	Daily maximum
Total organic carbon	Report, mg/l.
pH	Report, standard units.
Total recoverable mercury	Report, µg/l.
Total recoverable cadmium	Report, µg/l.
Total recoverable copper	Report, µg/l.
Total recoverable lead	Report, µg/l.
Total recoverable zinc	Report, µg/l.
Total recoverable chromium (Hex.).	Report, µg/l.
Benzene	Report, µg/l.
Naphthalene	Report, µg/l.

Reported analytical test results for the parameters listed above exceeding any of the screening values listed below shall be considered an indication of contamination from sources other than petroleum fuels:

Parameter	Indicator if discharge is into—	
	Fresh waters	Marine waters
Total organic carbon.	10.0 mg/l	10.0 mg/l
pH, SU's	6.0—8.5	6.5—8.5
Total recoverable mercury.	0.012 µg/l	0.025 µg/l
Total recoverable cadmium.	9.3 µg/l	9.3 µg/l
Total recoverable copper.	2.9 µg/l	2.9 µg/l
Total recoverable lead.	0.03 mg/l	5.6 µg/l
Total recoverable zinc.	86.0 µg/l	86.0 µg/l
Total recoverable chromium (Hexavalent).	11.0 µg/l	50.0 µg/l
Benzene	1.0 µg/l	1.0 µg/l
Naphthalene	100.0 µg/l	100.0 µg/l

If any of the analytical test results exceed the above screening values, discharge is not authorized by this permit. See paragraph I.A.3.b for further guidance.

In accordance with FAC 17–302.500(1)(a–c), the discharge shall at all times be free from floating solids, visible foam, turbidity, or visible oil in such amounts as to form nuisances on surface waters.

All discharges must comply with the following permit requirements:

(a) If analytical tests of Part I.A.3 reveal excessive benzene and naphthalene concentrations indicative of contamination from petroleum fuels, and the discharge will occur for thirty (30) days or less, the permittee shall comply only with the applicable effluent limitations and monitoring requirements in Part I.A.1 or I.A.2 for benzene, pH, and/or naphthalene and total lead. The commencement of the Part V biomonitoring program and Part I.B.3 EPA method 624 and 625 (one time analysis) is not required for this short-term activity. One (1) grab sample shall be analyzed per seven (7) days during the discharge period, and the total volume discharged shall be recorded. For discharges contaminated by petroleum fuels that last for less than a week, daily monitoring will be required for the applicable parameters. Upon receipt of written EPA notification of coverage that the NOI request is complete, these short-term discharges may commence. Discharge Monitoring Reports shall be submitted to EPA within thirty (30) days after termination of the discharge.

(b) If contamination from sources other than petroleum contamination does exist, as indicated by the results of the analytical tests required by Part I. A.3 above, the discharge is not covered by this general permit. The operator shall apply for an individual NPDES permit at least ninety (120) days prior to the date a discharge to waters of the United States is expected. No discharge is permissible without an effective NPDES permit.

(c) If analytical tests reveal no contamination exists from petroleum fuels or sources other than petroleum contamination as a result of the required analytical screening tests required in Part I, A.3, the permittee can commence discharge immediately and is covered by this permit without having to submit an NOI request for coverage to EPA, Region IV. A short summary of the proposed activity and copy of these analytical tests shall be sent to the same address specified in Part III.A at least (1) one week before discharge begins. These analytical tests shall be kept on site during discharge and made available to EPA, if requested. Additionally, no Discharge Monitoring Report (DMR) forms are required to be submitted to EPA, Region IV.

B. Other Requirements

1. Any more frequent effluent discharge monitoring required by the Florida Department of Environmental Protection (FDEP) for the parameters limited in this permit, or different parameters, shall be reported to the Permit Issuing Authority in accordance with the requirements of Part III of this permit.

2. Effluent limitations for combining contaminated groundwater pumped to above-ground storage tanks with contaminated groundwater from the site's recovery wells: The permittee shall notify FDEP of any intent to combine contaminated groundwater pumped to above-ground storage tanks with contaminated groundwater from the recovery well. Approval of this combined effluent discharge by FDEP will constitute approval to apply for coverage under this permit.

3. Within sixty (60) days of the effective date of this permit or startup of discharge the permittee shall also submit the results of the following analyses. These analyses shall be performed on a representative sample of the groundwater effluent discharge, taken after final treatment.

Required analyses (one time only):

a. EPA Method 625—Acid and base/neutral extractable organics
b. EPA Method 624—Purgeable Organics

If such analyses required in Part B.3 above reveal toxic pollutants other than those regulated in Part I.A. or subsequent Whole Effluent Toxicity (WET) tests reveal an LC_{50} of 100% or less in a test of 96 hours duration or less, coverage under this general permit will be reviewed for termination by EPA Region IV Enforcement Section.

4. If the pH is monitored continuously, the pH values shall not deviate outside the required range more than 1% of the time in any calendar month; and no individual excursion shall exceed 60 minutes. An "excursion" is an unintentional and temporary incident in which the pH value of discharge wastewater exceeds the range set forth in this permit.

C. Test Procedures

1. In performing the analysis for the dissolved constituents in the surface water and groundwater, the permittee shall use the guidelines recommended and described in FAC Sections 17–770.600(8)[a–d] of the Petroleum Contamination Cleanup Criteria (PCCC), amended February 20, 1990, or the most current edition.

2. If the petroleum contamination is from a petroleum fuel in which the source of contamination has not been identified, the groundwater shall be analyzed (using the recommended methods) for the following parameters as described in FAC Section 17.770.600(8)(c)1, of the PCCC, amended February 20, 1990, or the most current edition:

a. Lead	(EPA Method 239.2 or Standard Method 304).
b. Priority Pollutant Volatile Organics.	(EPA Method 624).
c. Priority Pollutant Extractable Organics.	(EPA Method 625).
d. Non-Priority Pollutant Organics (with GC/MS Peaks greater than 10 ppb).	(EPA Methods 624 and 625).

D. Schedule of Compliance

1. The permittee shall achieve compliance with the effluent limitations specified for discharges in accordance with the following schedule:

Permittees with Revoked Individual Permits:
Operational level attained—Upon Receipt of Notification of Coverage
New Dischargers:
Operational level attained—Upon Commencement of Discharge

2. No later than fourteen (14) calendar days after any date identified in the above schedule of compliance the permittee shall submit either a report of progress or, in the case of specific actions being required by identified dates, a written notice of compliance or noncompliance. In the latter case, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

Part II

Standard Conditions for NPDES Permits

Section A. General Conditions

1. Duty To Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

2. Penalties for Violations of Permit Conditions

Any person who violates a permit condition is subject to a civil penalty not to exceed $25,000 per day of such violation. Any person who willfully or negligently violates permit conditions is subject to a fine of up to $50,000 per day of violation, or by imprisonment for not more than 1 year, or both. Any person who knowingly violates permit conditions is subject to criminal penalties of $5,000 to 50,000 per day of violation, or imprisonment for not more than 3 years, or both. Also, any person who violates a permit condition may be assessed an administrative penalty not to exceed $10,000 per violation with the maximum not to exceed $125,000. [Ref: CFR 122.41(a)].

3. Duty To Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

4. Duty To Reapply

Where EPA is the Permit Issuing Authority (PIA), the terms and conditions of this permit are automatically continued in accordance with 40 CFR 122.6, only where the permittee has submitted a timely and complete Notice of Intent 180 days prior to expiration of this permit, and the PIA is unable through no fault of the permittee to issue a new permit before the expiration date.

5. Permit Modification

After notice and opportunity for a hearing, this permit may be modified, terminated, or revoked for cause (as described in 40 CFR 122.62 et seq.) including, but not limited to, the following:

a. Violation of any terms or conditions of this permit;

b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;

c. A change in any conditions that requires either temporary interruption or elimination of the permitted discharge; or

d. Information newly acquired by the Agency indicating the discharge poses a threat to human health or welfare.

If the permittee believes that any past or planned activity would be cause for modification or revocation and reissuance under 40 CFR 122.62, the permittee must report such information to the Permit Issuing Authority. The submittal of a new application may be required of the permittee. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

6. Toxic Pollutants

Notwithstanding Paragraph A–4, above, if a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the Act for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than any limitation for such pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition and the permittee so notified.

7. Civil and Criminal Liability

Except as provided in permit conditions on "Bypassing" Section B, Paragraph B–3, nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

8. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

9. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by Section 510 of the Act.

10. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

11. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

12. Duty to Provide Information

The permittee shall furnish to the Permit Issuing Authority, within a reasonable time, any information which the Permit Issuing Authority may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Permit Issuing Authority upon request, copies of records required to be kept by this permit.

Section B. Operation and Maintenance of Pollution Controls

1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Need to Halt or Reduce not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the condition of this permit.

3. Bypass of Treatment Facilities

a. Definitions

(1) *Bypass* means the intentional diversion of waste streams from any portion of a treatment facility, which is not a designed or established operating mode for the facility.

(2) *Severe property damage* means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. Bypass not exceeding limitations.

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Paragraphs c. and d. of this section.

c. Notice

(1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass; including an evaluation of the anticipated quality and effect of the bypass.

(2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Section D, Paragraph D–4 (24-hour notice).

d. Prohibition of bypass.

(1) Bypass is prohibited and the Permit Issuing Authority may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe and extensive property damage;

(b) There were no feasible alternatives to the bypass, such as maintenance of sufficient reserve holding capacity, the use of auxiliary treatment facilities, retention of untreated wastes, waste hauling, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(c) The permittee submitted notices as required under Paragraph c. of this section.

(2) The Permit Issuing Authority may, within its authority, approve an anticipated bypass, after considering its adverse effects, if the Permit Issuing Authority determines that it will meet the three conditions listed above in Paragraph d.(1) of this section.

4. Upsets

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit limitation if the requirements of 40 CFR 122.41(n)(3) are met. (Note that this provision does not apply to water quality requirements.)

5. Removed Substances

This permit does not authorize discharge of solids, sludge, filter backwash, or other pollutants removed in the course of treatment or control of

wastewaters to waters of the United States unless specifically limited in Part 1.

Section C. Monitoring and Records

1. Representative Sampling

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. All samples shall be taken at the monitoring points specified in this permit and, unless otherwise specified, before the effluent joins or is diluted by any other wastestream, body of water, or substance. Monitoring points shall not be changed without notification to and the approval of the Permit Issuing Authority.

2. Flow Measurements

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to insure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated and maintained to insure that the accuracy of the measurements are consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than ± 10% from the true discharge rates throughout the range of expected discharge volumes. Guidance in selection, installation, calibration and operation of acceptable flow measurement devices can be obtained from the following references:

(1) "A Guide of Methods and Standards for the Measurement of Water Flow", U.S. Department of Commerce, National Bureau of Standards, NBS Special Publication 421, May 1975, 97 pp. (Available from the U.S. Government Printing Office, Washington, D.C. 20402. Order by SD catalog No. C13.10:421.)

(2) "Water Measurement Manual", U.S. Department of Interior, Bureau of Reclamation, Second Edition, Revised Reprint, 1974, 327 pp. (Available from the U.S. Government Printing Office, Washington, D.C. 20402. Order by catalog No. 127.19/2:W29/2, Stock No. S/N 24003–0027.)

(3) "Flow Measurement in Open Channels and Closed Conduits", U.S. Department of Commerce, National Bureau of Standards, NBS Special Publication 484, October 1977, 982 pp. (Available in paper copy or microfiche from National Technical Information Service (NTIS), Springfield, VA 22151. Order by NTIS No. PB–273 535/5ST.)

(4) "NPDES Compliance Flow Measurement Manual", U.S. Environmental Protection Agency, Office of Water Enforcement, Publication MCD–77, September 1981, 135 pp. (Available from the General Services Administration (8BRC), Centralized Mailing Lists Services, Building 41, Denver Federal Center, Denver, CO 80225.)

3. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

4. Penalties for Tampering

The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 2 years per violation, or by both.

5. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by the Permit Issuing Authority at any time.

6. Record Contents

Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

7. Inspection and Entry

The permittee shall allow the Permit Issuing Authority, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable time any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

Section D. Reporting Requirements

1. Change in Discharge

The permittee shall give notice to the Permit Issuing Authority as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source; or

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Section D, Paragraph D–10(a).

2. Anticipated Noncompliance

The permittee shall give advance notice to the Permit Issuing Authority of any planned change in the permitted facility or activity which may result in noncompliance with permit requirements. Any maintenance or facilities, which might necessitate unavoidable interruption of operation and degradation of effluent quality, shall be scheduled during noncritical water quality periods and carried out in a manner approved by the Permit Issuing Authority.

3. Transfer of Ownership or Control

A permit may be automatically transferred to another party if:

a. The permittee notifies the Permit Issuing Authority of the proposed transfer at least 30 days in advance of the proposed transfer date;

b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

c. The Permit Issuing Authority does not notify the existing permittee of his or her intent to modify or revoke and reissue the permit. If this notice is not

received, the transfer is effective on the date specified in the agreement mentioned in paragraph b.

4. Monitoring Reports

See Part III of this permit.

5. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report (DMR). Such increased frequency shall also be indicated.

6. Averaging of Measurements

Calculations for limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Permit Issuing Authority in the permit.

7. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date. Any reports of noncompliance shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

8. Twenty-Four Hour Reporting

The permittee shall orally report any noncompliance which may endanger health or the environment, within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times; and if the noncompliance has not been corrected, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Permit Issuing Authority may verbally waive the written report, on a case-by-case basis, when the oral report is made. The following violations shall be included in the 24 hour report when they might endanger health or the environment:

a. An unanticipated bypass which exceeds any effluent limitation in the permit.

b. Any upset which exceeds any effluent limitation in the permit.

9. Other Noncompliance

The permittee shall report in narrative form, all instances of noncompliance not previously reported under Section D, Paragraphs D–2, D–4, D–7, and D–8 at the time monitoring reports are submitted. The reports shall contain the information listed in Paragraph D–8.

10. Changes in Discharges of Toxic Substances

The permittee shall notify the Permit Issuing Authority as soon as it knows or has reason to believe:

a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic substance(s) (listed at 40 CFR 122, Appendix D, Table II and III) which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(1) One hundred micrograms per liter (100 µg/l); or

(2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2, 4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony.

b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant (listed at 40 CFR 122, Appendix D. Table II and III) which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(1) Five hundred micrograms per liter (500 µg/l); or

(2) One milligram per liter (1 mg/l) for antimony.

11. Signatory Requirements

All applications, reports, or information submitted to the Permit Issuing Authority shall be signed and certified.

a. All permit applications shall be signed as follows:

(1) For a corporation: by a responsible corporate officer.

For the purpose of this Section, a responsible corporate officer means:

(1) A president, secretary, treasurer or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy—or decision-making functions for the corporation, or (2) the manager of one or more manufacturing production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.

b. All reports required by the permit and other information requested by the Permit Issuing Authority shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and

(3) The written authorization is submitted to the Permit Issuing Authority.

c. Certification. Any person signing a document under paragraphs (a) or (b) of this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under the direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

12. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Permit Issuing Authority. As required by the Act, permit applications, permits

and effluent data shall not be considered confidential.

13. Penalties for Falsification of Reports

The Clean Water Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 2 years per violation, or by both.

Section E. Definitions

1. Permit Issuing Authority

The Regional Administrator of EPA Region IV or his designee, unless at some time in the future the State receives the authority to administer the NPDES program and assumes jurisdiction over the permit; at which time, the Director of the State program receiving authorization becomes the issuing authority.

2. Act

Act means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act) Public Law 92–500, as amended by Public Laws 95–217, 95–576, 96–483,97–117, and Public Law 100–4, 33 U.S.C. 1251 et seq.

3. Concentration Measurements

a. The "average monthly concentration", is the sum of the concentrations of all daily discharges sampled and/or measured during a calendar month on which daily discharges are sampled and measured, divided by the number of daily discharges sampled and/or measured during such month (arithmetic mean of the daily concentration values). The daily concentration value is equal to the concentration of a composite sample or in the case of grab samples is the arithmetic mean (weighted by flow value) of all the samples collected during the calendar day.

b. The "maximum daily concentration", is the concentration of a pollutant discharge during a calendar day. It is identified as "Daily Maximum" under "Other Limits" in Part I of the permit and the highest such value recorded during the reporting period is reported under the "Maximum" column under "Quality" on the DMR.

4. Other Measurements

a. The effluent flow expressed as MGD is the 24 hour average flow averaged monthly. It is the arithmetic mean of the total daily flows recorded during the calendar month. Where monitoring requirements for flow are specified in Part I of the permit the flow rate values are reported in the "Average" column under "Quantity" on the DMR.

b. An "instantaneous flow measurement" is a measure of flow taken at the time of sampling, when both the sample and flow will be representative of the total discharge.

c. Where monitoring requirements for pH or dissolved oxygen are specified in Part I of the permit, the values are generally reported in the "Quality or Concentration" column on the DMR.

5. Types of Samples

a. Grab Sample: A "grab sample" is a single influent or effluent portion which is not a composite sample. The sample(s) shall be collected at the period(s) most representative of the total discharge.

6. Calendar Day

A calendar day is defined as the period from midnight of one day until midnight of the next day. However, for purposes of this permit, any consecutive 24-hour period that reasonably represents the calendar day may be used for sampling.

7. Hazardous Substance

A hazardous substance means any substance designated under 40 CFR Part 116 pursuant to Section 311 of the Clean Water Act.

8. Toxic Pollutant

A toxic pollutant is any pollutant listed as toxic under Section 307(a)(1) of the Clean Water Act.

Section F. Application Requirements

a. For expired individual NPDES permits, dischargers desiring coverage under this general permit are required to submit a notice of intent (NOI) to the Permit Issuing Authority. The NOI shall include (1) The name and address of the person that the permit will be issued to (2) the name, and address of the operation, including county location, (3) the applicable individual NPDES number(s), (4) the identification of any new discharge location not contained in the expired permit, (5) evidence that the operation has obtained approval of a Remedial Action Plan (RAP) Order from the FDEP, (6) a map showing the facility and discharge location (including latitude and longitude), and (7) the name of the receiving water. Operators having several individual permits are encouraged to consolidate requests for coverage into one NOI for all individual permits. The previous submission of the proper forms in the renewal application does not relieve the permittee desiring coverage under the general permit of the requirement to file a NOI.

b. Dischargers with current individual NPDES permits that desire coverage under this general permit are required to file an NOI to the Permit Issuing Authority at least thirty (30) days prior to expiration of their current permit(s). The NOI shall contain the same information specified in paragraph a above. Permittees desiring to renew their individual permit are required to submit the appropriate application forms at least 180 days before expiration of their individual permit.

c. Dischargers who have not previously obtained an individual NPDES permit are required to submit to EPA the FDEP approval order letter approving the site RAP. The RAP approval order shall be attached to an NOI to be covered by the general permit and shall contain the same information specified in paragraph a above. The application for coverage under the general permit must be made at least forty-five (45) days before the discharge is to commence.

d. Dischargers seeking coverage under Part I A.3.a. will be required to submit to EPA the date the discharge is expected to cease, results of analytical data and the same information in paragraph a above, except items (3), (4) and (5). Notification of coverage to discharge will be upon receipt of EPA's short-term coverage letter.

e. Notification of coverage will be given by the Permit Issuing Authority by certified mail to the permittee, for dischargers seeking coverage under Part I Sections A.1 and A.2, with the issuance date for each facility being the effective date of coverage by the Permit Issuing Authority.

f. Dischargers meeting the conditions set forth in Part I A.3.c. are not required to submit an detailed NOI as outlined above, but must submit a copy of the analytical tests and a summary of the proposed activity at least one (1) week before discharge begins. These dischargers are covered upon receipt of the data, unless notified otherwise by EPA.

g. The coverage of the permit shall expire on _____, five (5) years from the effective date of the permit.

h. In accordance with 40 CFR 122.28(a)(2) permittees who are covered by this general permit who seek to be continued under this general permit, shall submit an complete NOI in accordance with paragraph a, to EPA 180 days before the expiration of this permit.

Section G. Additional General Permit Conditions

1. The Permit Issuing Authority may require any person authorized by this permit to apply for and obtain an individual NPDES permit when:

a. The discharge(s) is a significant contributor of pollution;

b. The discharger is not in compliance with the conditions of this permit;

c. A change has occurred in the availability of the demonstrated technology of practices for the control or abatement of pollutants applicable to the point sources;

d. Effluent limitation guidelines are promulgated for point sources covered by this permit;

e. A Water Quality Management Plan containing requirements applicable to such point source is approved; or

f. The point source(s) covered by this permit no longer:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes;

(3) Require the same effluent limitations or operating conditions;

(4) Require the same or similar monitoring; and

(5) In the opinion of the RA, are more appropriately controlled under an individual permit than under a general permit.

The Regional Administrator (RA) may require any operator authorized by this permit to apply for an individual NPDES permit only if the operator has been notified in writing that a permit application is required.

2. Any operator authorized to discharge by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit. The operator shall submit an application together with the reasons supporting the request to the RA.

3. When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to the owner or operator is automatically terminated on the effective date of the individual permit.

4. A source excluded from coverage under this general permit solely because it already has an individual permit may request that its individual permit be revoked, and that it be covered by this general permit. Upon revocation of the individual permit, this general permit shall apply to the source.

5. A petroleum contamination recovery operation may be excluded from this general permit if it proposes discharges to receiving waters that are classified as "Special Protection, Outstanding Florida Waters, Outstanding National Resource Waters" as set forth by FAC 17–302.700, dated April 25, 1993.

6. The permittee shall notify the Permit Issuing Authority within 30 days after the permanent termination of discharge from their facility. This letter shall include the necessary *Site Rehabilitation Completion Order* (SRCO) from Florida Bureau of Waste Cleanup which constitutes final action on the State level for completion of cleanup activities at the affected site. After review of the SRCO, EPA will inactivate coverage of the general NPDES permit for the facility. Dischargers covered under this general permit without RAP approval shall submit a *No Discharge Certification Form* to EPA, within 30 days after ceasing discharge.

Part III

Other Requirements

A. Reporting of Monitoring Results

Monitoring results obtained for each calendar month shall be summarized and reported on a DMR Form (EPA No. 3320–1), one DMR for each month. Unless otherwise required in Part V, these forms shall be submitted after each calendar quarter and postmarked no later than the 28th day of the month following the completed calendar quarter. (For example, data for January–March shall be submitted by April 28.) Calendar quarters are January–March, April–June, July–September and October–December. Signed copies of these and all other reports required by Section D of Part II, Reporting Requirements, and Part V shall be submitted to the Permit Issuing Authority at the following address: U.S. Environmental Protection Agency, Region IV, Enforcement Section, Water Permits and Enforcement Branch, 345 Courtland Street, N.E., Atlanta, GA 30365.

If no discharge occurs during the reporting period, sampling requirements of this permit do not apply. The statement "No Discharge" shall be written on the DMR form. If, during the term of this permit, the facility ceases discharge to surface waters, the Permit Issuing Authority shall be notified immediately upon cessation of discharge.

B. Reopener Clause

This permit shall be modified, or alternatively revoked and reissued to comply with any applicable effluent standard or limitation issued or approved under Sections 301(b)(2) (C), and (D), 304(b)(2), and 307(a)(2) of the Clean Water Act (the Act), if the effluent standard or limitation so issued or approved—

1. Contains different conditions or is otherwise more stringent than any condition in this permit; or

2. Controls any pollutant not limited in the permit. The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable.

Part IV

Best Management Practices and Pollution Prevention Conditions

Section A. General Conditions

1. BMP Plan

Preparation of a Best Management Practices (BMP) Plan shall be prepared in conjunction with development of the Remedial Action Plan required by Florida Department of Environmental Protection (See Part II.F.c.). The permittee shall maintain the BMP plan at the facility and shall make the plan available to the permit issuing authority upon request. The "NPDES Guidance Document" can be used as a reference which contains technical information on BMPs and the elements of the BMP program. The permittee shall develop and implement a BMP plan which prevents, or minimizes the potential for, the release of pollutants from ancillary activities, including material storage areas; plant site runoff; in-plant transfer, process and material handling areas; loading and unloading operations, and sludge and waste disposal areas, to the waters of the United States through plant site runoff; spillage or leaks; sludge or waste disposal; or drainage from raw material storage. The term pollutants refers to any substance listed as toxic under Section 307(a)(1) of the Clean Water Act, oil, as defined in Section 311(a)(1) of the Act, and substance listed as hazardous under Section 311 of the Act. Copies of the "NPDES Guidance Document" may be obtained by submitting written requests to: Director, Water Management Division, U.S. EPA Region IV, 345 Courtland St. N.E., Atlanta, Georgia 30365.

2. Pollution Prevention Plan

New permittees with long term treatment systems expected to discharge one (1) year or more shall develop a *Pollution Prevention Plan* for the site and submit it with the NOI. It shall contain the following information:

(a) A Narrative of What Caused the Groundwater Contamination.

(b) Methods currently being deployed at the site to *prevent* groundwater contamination from reoccurring.

(c) Other alternative treatment options which were considered in *reducing* the groundwater contamination.

(d) Explanation of why long term treatment of discharge to Surface Waters of the United States was chosen as opposed to:

(1) *Reduction-Monitor Phase I*—Using a combination of techniques to significantly reduce groundwater contamination that could be achieved in three (3) months or less, with the objective of reaching a *monitor-only* status.

(2) *Reduction-Monitor Phase II*—Using a combination of techniques to significantly reduce groundwater contamination that could be achieved in six (6) months or less, with the objective of reaching a *monitor-only* status.

In an effort to promote pollution prevention, the Permit Issuing Authority may issue permits which include or require pollution prevention activities.

Part V

Whole Effluent Toxicity Testing Program Acute Freshwater Language

As required by Part I of the permit, within 30-days after commencement of discharge, permittees discharging to fresh waters, which are surface waters in which the chloride concentration at the surface is less than 1500 milligrams per liter, shall initiate the series of tests described below to evaluate whole effluent toxicity of the discharge from the outfall. If more than one (1) outfall exists, separate tests will be performed on each outfall. All test species, procedures and quality assurance criteria used shall be in accordance with *Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms*, EPA/600/4–90/027F, or the most current edition. The dilution/control water used will be moderately hard water as described in EPA/600/4–90/027F, Section 7, or the most current edition. A standard reference toxicant quality assurance test shall be conducted concurrently with each species used in the toxicity tests and the results submitted with the discharge monitoring report (DMR). Alternatively, if monthly QA/QC reference toxicant tests are conducted, these results must be submitted with the DMR.

1. a. The permittee shall conduct 96-hour acute static-renewal multi-concentration toxicity tests using the daphnid (*Ceriodaphnia dubia*) and the fathead minnow (*Pimephales promelas*). All tests shall be conducted on one grab sample of 100% final effluent. All tests shall be conducted on a control (0%) and the following dilution concentrations at a minimum: 100.0%, 50.0%, 25.0%, 12.5%, and 6.25%.

b. If control mortality exceeds 10% for either species in any test, the test(s) for that species (including the control) shall be repeated. A test will be considered valid only if control mortality does not exceed 10% for either species.

2. The toxicity tests specified above shall be conducted once every month until three (3) valid monthly tests have been completed, and once every year thereafter for the duration of the permit, unless notified otherwise by the permit issuing authority. These tests are referred to as "routine" tests.

3. a. If unacceptable acute toxicity (an LC_{50} of 100% or less occurs in either test species in any of the above-described tests within the specified time) is found in a "routine" test, the permittee shall conduct two additional acute toxicity tests in the same manner as the "routine" test on the specie(s) indicating unacceptable acute toxicity. For each additional test, the sample collection requirements and test acceptability criteria specified in Section 1 above must be met for the test to be considered valid. The first test shall begin within two weeks of the end of the "routine" tests, and shall be conducted weekly thereafter until two additional, valid tests are completed. The additional tests will be used to determine if the toxicity found in the "routine" test is still present.

b. Results from additional tests, required due to unacceptable acute toxicity in the "routine" test(s), must be *reported* on the Discharge Monitoring Report (DMR) Form for the month in which the test was begun. Such test results must be *submitted* within 45 days of completion of the second additional, valid test.

As required by Part I of this permit, within 30-days after commencement of discharge, permittees discharging to marine waters, which are surface waters in which the chloride concentration at the surface is greater than or equal to 1500 milligrams per liter, shall initiate the series of tests described below to evaluate whole effluent toxicity of the discharge from the outfall. If more than one (1) outfall exists, separate tests will be performed on each outfall. All test species, procedures and quality assurance criteria used shall be in accordance with *Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms*, EPA/600/4–90/027F, or the most current edition. The dilution/control water and effluent used will be adjusted to a salinity of 20 parts per thousand using artificial sea salts as described in EPA/600/4–90/027F, Section 7 (or the most current edition). A standard reference toxicant quality assurance test shall be conducted concurrently with each species used in the toxicity tests and the results submitted with the discharge monitoring report (DMR). Alternatively, if monthly QA/QC reference toxicant tests are conducted, these results must be submitted with the DMR.

1. a. The permittee shall conduct 96-hour acute static-renewal multi-concentration toxicity tests using the mysid shrimp (*Mysidopsis bahia*) and the inland silverside (*Menidia beryllina*). All tests shall be conducted on one grab sample of 100% final effluent. All tests shall be conducted on a control (0%) and the following dilution concentrations at a minimum: 100.0%, 50.0%, 25.0%, 12.5%, and 6.25%.

b. If control mortality exceeds 10% for either species in any test, the test(s) for that species (including the control) shall be repeated. A test will be considered valid only if control mortality does not exceed 10% for either species.

2. The toxicity tests specified above shall be conducted once every month until three (3) valid monthly tests have been completed, and once every year thereafter for the duration of the permit, unless notified otherwise by the permit issuing authority. These tests are referred to as "routine" tests.

3. a. If unacceptable acute toxicity (an LC50 of 100% or less occurs in either test species in any of the above-described tests within the specified time) is found in a "routine" test, the permittee shall conduct two additional acute toxicity tests in the same manner as the "routine" test on the specie(s) indicating unacceptable toxicity. For each additional test, the sample collection requirements and test acceptability criteria specified in Section 1 above must be met for the test to be considered valid. The first test shall begin within two weeks of the end of the "routine" tests, and shall be conducted weekly thereafter until two additional, valid tests are completed. The additional tests will be used to determine if the toxicity found in the "routine" test is still present.

b. Results from additional tests, required due to unacceptable acute toxicity in the "routine" test(s), must be reported on the Discharge Monitoring Report (DMR) Form for the month in which the test was begun. Such test results must be submitted within 45 days of completion of the second additional, valid test.

Fact Sheet for National Pollutant Discharge Elimination System General Permit to Discharge Treated Wastewater to U.S. Waters in the State of Florida

NPDES Permit No. FLG830000

1. Synopsis of Application

a. Name and Address of Applicant

Applicants within the political boundary of the State of Florida.

b. Type of Facilities

Systems for treatment of petroleum fuel contaminated ground water and stormwater and general dewatering activity associated with non-contaminated sites.

c. Design Capacity of Facility

To be based on a case by case analyses of the contaminated site.

d. Applicant's Receiving Waters

Waters of the U.S. in the State of Florida.

e. Description of Wastewater Treatment Facilities

Air stripping, aeration, carbon adsorption, when necessary, or other water treatment technologies which can effectively treat contaminated waters to the levels required by the general permit.

f. Description of Discharges (as Reported by Applicant)

Reviewing the effluent data submitted by eight (8) individual applicants, the following information was obtained:

Effluent characteristics	No. of facilities reporting	Reported concentration highest
Benzene	8	1.0 µg/l
Naphthalene	2	10.0 µg/l
Do	1	20.0 µg/l
Do	1	1.0 µg/l
Do	4	No data reported.
Lead	1	20 µg/l
Do	1	7 µg/l
Do	1	100 µg/l
Do	5	No data reported.

2. Proposed Effluent Limits for This General Permit

a. Discharges contaminated with *automotive gasoline*:

Effluent characteristic	Daily maximum
Benzene	1.0 µg/l
*Total Lead	30.0 µg/l
pH	See Part I.A.1

b. Discharges contaminated with *aviation fuels and diesel*:

Effluent characteristic	Daily maximum
Benzene	1.0 µg/l
Naphthalene	100 µg/l
*Total Lead	30 µg/l
pH	See Part I.A.1

*Required only when contamination results from leaded fuel.

3. Background

The adoption of the State Underground Petroleum Environmental Response (SUPER) Act of 1986 set standard procedures for the State of Florida's Department of Environmental Protection (FDEP) and their Division of Waste Management's Bureau of Waste Cleanup to regulate during cleanup processes undertaken at all petroleum contamination sites. The SUPER Act was amended on February 20, 1990, and is currently referred to as Chapter 17–770, Petroleum Contamination Cleanup Criteria.

Chapter 17–770 gives the FDEP authority over cleanup operations for areas which have been contaminated by fuels from petroleum storage systems. Chapter 17–770 also provides guidance for permittees in preparing initial remedial actions (IRA's), contamination assessment reports (CAR's), and remedial action plans (RAP's) while assessing and delineating areas where suspected petroleum contamination has occurred. In order to facilitate the authorization process for the potentially large number of permittees who would be required to discharge treated groundwater to surface waters of Florida, the FDEP requested that an NPDES general permit be issued to cover these facilities in Florida. The U.S. Environmental Protection Agency (EPA), after proposing a draft permit on August 25, 1988 (53 FR 32442), issued a final NPDES general permit on July 17, 1989 (54 FR 29986), to cover the facilities and similar types of discharges associated with them. This NPDES General Permit was modified on August 29, 1991 (56 FR 42736), to address general dewatering for uncontaminated discharges of produced groundwater and short term discharges from facilities with treated groundwater. This modification also changed the number of the permit from FLG040001 to FLG830000.

As of June, 1994, EPA has authorized over 350 facilities to discharge under the general permit, and the FDEP estimates that there are over 20,000 facilities that have reported suspected petroleum leaks throughout the State of Florida. The current permit FLG83000 expired on July 16, 1994, and numerous facilities are either discharging under this permit or submitting Notices of Intent for coverage under this general permit. Therefore, EPA Region IV is proposing to reissue the NPDES General Permit No. FLG830000 to facilities in the State of Florida to assist in permitting these types of activities. The requirements for those facilities that were covered by the current NPDES General Permit before July 16, 1994, will be continued in force until reissuance of this general permit occurs. However, once reissuance occurs, all facilities covered by this permit will be required to submit a NOI requesting continued coverage under the reissued general permit within sixty (60) days after reissuance of the general permit. Permittees submitting NOI's after July 17, 1994, will not be provided with a notification of coverage under the general permit. These facilities will not be allowed to discharge until the date which the reissued NPDES General Permit, FLG830000, becomes effective, or until an individual permit is issued to the facility.

4. General Information for This Florida General Permit

This general permit places limitations on discharges from treatment systems which are used to treat common contaminants found in petroleum fuels and allows the permittee to expedite startup of a hydrocarbon recovery system once a leak has been detected and groundwater has been contaminated. The general permit also allows general dewatering for uncontaminated sites. Normally, such a recovery system consists of monitoring wells that are used for sampling and delineating plume movement. Recovery wells, which may be vertical or horizontal, are used to recover contaminated groundwater in the impacted area. The placement of recovery wells is generally determined after consideration of geologic conditions and groundwater movement in order to maximize recovery of petroleum hydrocarbons. The rate of movement by the contaminants is affected by the varying permeability and adsorptive characteristics of the water-filled pore spaces and depth of the water table. After the contamination reaches the water table, the free-floating contaminant is usually pumped from the recovery wells to an above ground storage tank. Additionally, vapor recovery systems are often used to remove volatiles from the soil. The dissolved organics in the contaminated water are pumped to an air stripper and treated using packed-tower aeration

and, when necessary, carbon adsorption. Both of these treatment processes have proven effective in removing up to 99% of the volatile compounds before discharge into surface waters.

The Florida FDEP and EPA Region IV estimates that of the sites for which a RAP is prepared in any given year, a maximum of 100 facilities may propose discharge to surface water under this general permit. In order to allow hydrocarbon recovery operations to be performed without processing individual applications for permit issuance, EPA proposes to reissue this general permit to sources identified within the political boundaries of the State of Florida.

This general permit may be used to authorize discharges of treated groundwater and storm water incidental to groundwater cleanup operations. Long term cleanups, over thirty (30) days, must have an approved remedial action plan (RAP) before submitting a NOI to discharge under this NPDES General permit. The RAP Approval Order must be submitted with the applicant's NOI and is required before authorizing cleanups over thirty (30) days. This permit is not limited to cleanup operations funded by the State of Florida, but may cover all such cleanup operations if the NOI requirements are satisfied.

5. Basis for Final Effluent Limits and Permit Conditions

The effluent limits for the general permit are based on treatment technology data obtained from previous individual application requests. The general permit has been written to require an effluent limit on three (3) chemicals, i.e., benzene, naphthalene and lead.

Benzene is a potential carcinogen according to EPA 440/5–80–0180 and Florida has adopted a WQS for this parameter. However, the previous technology-based effluent limit of 1.0 µg/l is more stringent than Florida's water quality standard of 71.28 µg/l at (FAC 17–302.530(9)), dated April 25, 1993; therefore, the more stringent technology based limit, which is also protective of water quality, will be included in the reissued permit. Based on the "Ambient Water Quality Document for Benzene," this maximum contaminant level for benzene is well below the 10^{-6} risk factor of 40 µg/l for consumption of contaminated aquatic organisms. This limit of 1.0 µg/l is also between the 10^{-5} risk factor of 6.6 µg/l and 10^{-6} risk factor of .66 µg/l for consumption of contaminated water and aquatic organisms.

Most facilities have been able to meet the technology based effluent limit for lead of 30 µg/l, which is required since older gasoline sites may have marketed fuels with leaded compounds added in the form of tetraethyllead. Based on the "Ambient Water Quality Document for Lead," this limit is well below the current human health standard of 50 µg/l, which is protective of human health against the ingestion of contaminated water and contaminated aquatic organisms (EPA 440/5–80–057).

The naphthalene limit of 100 µg/l was developed based on FDEP petroleum contamination site cleanup criteria (17–770.730(5)(a)2e), amended February 20, 1990. According to the "Ambient Water Quality Document for Naphthalene," acute and chronic toxicity to freshwater aquatic life occurs at concentrations as low as 2300 µg/l for the Rainbow Trout and 620 µg/l for the Fathead Minnow and would occur at lower concentrations among species that are more sensitive than those tested. Also, according to the "Handbook of Environmental Data and Organic Chemicals," tainting of fish flesh occurs for naphthalene near 1000 µg/l. The petroleum site criteria limit of 100 µg/l for naphthalene is more stringent than EPA's water quality document for this parameter and should provide adequate protection for more sensitive aquatic organisms.

The pH requirements were established based on water quality criteria at Florida Administrative Code (FAC) 17–303.530(52)(c), dated April 25, 1993. For fresh waters and coastal waters, the pH of the effluent shall not be lowered to less than 6.0 units for fresh waters, or less than 6.5 units for marine waters, or raised above 8.5 units, unless the permittee submits data during the NOI request confirming a natural background pH outside of this range. If the natural background of the receiving water, as revealed by sampling data from the permittee in the NOI request, is determined to be less than 6.0 standard units for fresh waters, or less than 6.5 standard units in marine waters, the pH shall not vary below natural background or vary more than one (1) unit above natural background. If natural background of the receiving water, as revealed by sampling data from the permittee in the NOI request, is determined to be higher than 8.5 units, the pH shall not vary above natural background or vary more than one (1) unit below natural background. The continuous monitoring for pH is an option granted to the permittee and is based on § 401.17 of the Clean Water Act.

The permittee may request an individual permit to seek less stringent end-of-pipe effluent limitations for benzene, total lead, and naphthalene dependent upon resulting instream concentrations during critical low flows of the receiving stream.

The groundwater reporting requirements for the parameters: TOC, pH, the Total Recoverable Metals which include Mercury, Cadmium, Copper, Lead, Zinc, Chromium (Hexavalent), Benzene and Naphthalene, to determine if contamination exists from other sources are based on Section 308(a) of the Clean Water Act. The screening values for TOC, Benzene, and Naphthalene are based on the final August 29, 1991, modification (56 FR 42739) and the standards for total recoverable metals are based on the most current Florida Water Quality Standards for total recoverable metals at FAC Section 17–302.530 [4–25–93]. As with any petroleum fuel, other aromatic compounds will be present once testing has occurred. Other volatiles will be present in untreated groundwater in greater concentrations than benzene. Past experience in treatment design has shown that these organics can be effectively treated before discharging to surface waters. According to the "Toxicant Profile for the ALKYL BENZENES," (Ethylbenzene, Isopropylbenzene, Toluene, Xylene) prepared for Florida's DEP by the Center of Biomedical and Toxicological Research at Florida State University, levels for these ALKYL BENZENES of 100–200 µg/l were recommended for the protection of aquatic organisms and human health. These recommendations are below EPA's "Ambient Water Quality Criteria" documents recommendation for human health which suggest levels of 1400 µg/l to 14300 µg/l for Ethylbenzene and Toluene.

The recommended treatment technology of air stripping and, when necessary, carbon adsorption, will reduce the benzene concentration to below 1.0 µg/l. Therefore, EPA will not impose specific limits on the other pollutants which may occur since meeting the limits set in this permit should reduce the other pollutants well below those levels allowable based on Florida's water quality standards. Also, the effluent shall not be lethal to more than 50% of appropriate fish or invertebrate test organism in a 96-hour static renewal test. Whole Effluent Toxicity (WET) monitoring tests performed by six (6) facilities between May 8, 1991 thru March, 1994 indicated that these effluents were toxic and, therefore, have the reasonable potential

to violate Florida's water quality standards at FAC Section 17–4.244(3)(a). Because previous 48-hour static WET monitoring tests have revealed that these effluents have the potential of being toxic, toxicity testing requirements as authorized and required by 40 CFR Section 122.44(d)(1)(iv), and contained in Part I, A.1 and A.2 and in Part V have been included to ensure that the effluent from these facilities conforms with the FAC. An LC_{50} of 100% or less in a test of 96 hours duration or less will constitute a violation of FAC (February 2, 1994) Section 17–4.244(3)(a) and the terms of this permit.

Since the recovery wells in most instances are placed in areas of highest contamination, it is reasonable to conclude that the greatest potential for toxicity should occur during the initial startup stages of operation. Therefore, an initial frequency of once every month for three (3) months is included in these requirements to indicate toxicity and determine treatment performance of these facilities immediately after commencement of discharge. If no toxicity is confirmed, the frequency is then reduced to yearly since the permittee will be required to meet effluent limitations and the potential for toxicity is at a minimum. Failure to demonstrate compliance with the acute toxicity requirement will constitute a violation of the terms of the permit.

The sample type for all biomonitoring is "Grab" in accordance with Part V of this general permit.

The permittee is required to develop and implement a Best Management Practices (BMPs) plan in conjunction with development of the Remedial Action Plan required by FDEP. BMPs are actions or procedures to prevent or minimize the potential for the release of toxic pollutants or hazardous substances in significant amounts to surface waters. Additionally, for long term cleanups, the permittee shall develop a Pollution Prevention Plan which considers alternatives for preventing and reducing impacts to surface waters in accordance with Part IV. A.2 of this permit.

6. Treatment Technology

According to EPA's publication entitled "Treatment of Volatile Organic Compounds in Drinking Water," a drinking water research experiment was conducted on spiked water using one organic volatile and then by combining two volatiles. The experiment used aeration as the treatment process. It was discovered that no difference was observed in treatment efficiency when applying aeration to one organic chemical or a combination of volatiles. In this particular experiment an overall efficiency of 92% was obtained. Most petroleum fuels consist of a combination of volatiles and aromatics, each different, based on additives included during refining of the fuel. In case studies revealed in the Environmental Science and Engineering's document ESE No. 84–912–0300, packed tower aeration utilizing different packing materials, varying flow paths and air-to-water ratios have been proven effective in removing over 99% of the volatiles. Some particular compounds are not as easily air-stripped as others which would necessitate the need for a combination treatment design used in conjunction with aeration. Carbon adsorption has been proven effective in removing organics from water until the influent concentration is in equilibrium with the effluent and the organics no longer adhere to the carbon surface. Adsorption has been used successfully in removing less volatile compounds of higher molecular weight. Other remediation techniques currently being deployed include vapor recovery systems and bioremediation which enhances biological activity.

According to (EPA 570/9–84–005) entitled "Adsorption Techniques in Drinking Water Treatment" the efficiency of carbon adsorption was proven effective during a case study in Hialeah, Florida at the Preston water treatment plant. In this study, groundwater from a drinking water aquifer was spiked with higher molecular weight extractables before treating the water with granular activated carbon. It was found that more than 90% removal of the spiked compounds was obtained. The combination of air-stripping with adsorption usually extends the adsorptive life of the activated carbon and leads to more efficient treatment, but is not always required or recommended in every situation.

7. Other Legal Requirements

A. Executive Order 12291

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to Section 8[b] of that order.

B. Regulatory Flexibility Act

After review of the facts presented in this document, I hereby certify, pursuant to the provisions of 5 U.S.C. § 605(b), that this NPDES general permit will not have a significant impact on a substantial number of small entities. Moreover, the permit reduces a significant administrative burden on regulated sources.

C. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this draft general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 et seq. The information collection requirements of this permit have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

8. Requested Variances or Alternatives to Required Standards

None.

9. Effective Date of Proposed Effluent Limits

The proposed effluent limits will be effective immediately upon receipt of written notification of coverage from the Permit Issuing Authority.

10. State Certification Requirements

Section 301(b)(1)(c) of the Act requires that NPDES permits contain conditions which ensure compliance with applicable State water quality standards or limitations. Section 401 of the Act requires that States certify that Federally issued permits are in compliance with State law. This permit is for operations within waters within the State of Florida.

EPA will request State officials to review and provide appropriate certification of this draft general permit pursuant to 40 CFR 124.53.

11. EPA Contact

Additional information concerning the permit may be obtained at the address and during the hours noted in Item 12 from: Ms. Lena Scott, Public Notice Coordinator, 404/347–3004.

12. The Administrative Record

Including application, draft permit, fact sheet, public notice (after release), State Certification (after receipt), comments received, and additional information is available by writing the EPA, Region IV, or for review and copying at 345 Courtland Street, NE., Atlanta, Georgia 30365, between the hours of 8:15 a.m. and 4:30 p.m., Monday through Friday. Copies will be provided at a minimal charge per page.

13. Proposed Schedule for Permit Issuance

Draft Permit FDEP Bureau of Waste Cleanup—May 20, 1994
Draft Permit to EPA Headquarters—August 29, 1994

Draft to State for Certification—August 30, 1994
Draft Permit to Federal Register for Public Notice—September 7, 1994
Close Comment Period—October 7, 1994

[FR Doc. 94–23115 Filed 9–16–94; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FCC 94–227]

International Call-Back Services

AGENCY: Federal Communications Commission.

ACTION: Notice of solicitation of public comments.

SUMMARY: The Federal Communications Commission has expanded the scope of the issues to be reconsidered in its grant of three applications for authority to resell international switched services of other carriers using a "call-back" configuration. The comments supporting an AT&T petition for reconsideration in this proceeding raised issues involving complex questions of international law, international comity and the law of foreign countries, including the allegation that call-back services employing an uncompleted call signaling configuration violate international law. Therefore, the Commission is seeking additional comments from the parties and members of the public on all of the issues raised in the comments supporting AT&T's petition. The Commission also is seeking the advice of the Department of State regarding the issues of international law, international comity, and the laws of foreign countries. Further, in order to augment the record with respect to AT&T's assertion that uncompleted call signalling violates the Federal wire fraud statute, the Commission will seek the advice of the Department of Justice on this issue.

DATES: Comments are due October 14, 1994 and Reply Comments November 14, 1994.

FOR FURTHER INFORMATION CONTACT: Troy F. Tanner, Attorney, Common Carrier Bureau, (202) 418–1470.

SUPPLEMENTARY INFORMATION:

In the matter of: VIA USA, Ltd. Telegroup, Inc.; Applications for Authority Under Section 214 of the Communications Act of 1934, as amended, to operate as International Resale Carriers.

[File Nos. I–T–C–93–031 I–T–C–93–050]

Discount Call International Co.; Application for Authority Under Section 214 of the Communications Act, as amended.

[File No. I–T–C–93–054]

Order

Adopted: September 2, 1994.
Released: September 12, 1994.

By the Commission:

1. On May 11, 1994, the Commission granted the above-referenced Section 214 applications of VIA USA, Ltd., Telegroup, Inc., and Discount Call International Co. to resell international switched services of other carriers using a "call-back" configuration.[1] This service allows a customer in a foreign country to use foreign facilities to dial a telephone number in the United States and receive dial tone at a switch at the reseller's U.S. location, which the customer can then use to place a call via an outbound switched service of a U.S. carrier. The calls originating at U.S. locations are billed at U.S.-tariffed rates.

2. AT&T petitioned to deny these applications alleging that this service constitutes an unreasonable practice under Section 201 of the Communications Act ("the Act") and may constitute wire fraud. We denied AT&T's petition.[2] On June 10, 1994, AT&T filed a petition for reconsideration asking us to find that uncompleted call signalling is an unreasonable practice under Section 201(b) of the Act, is contrary to the public interest standard of Section 214 of the Act, violates Section 202(a) of the Act, and violates the Federal wire fraud statute, 18 U.S.C. 1343.[3]

3. We received comments in support of AT&T's petition from MCI Telecommunications Corporation (MCI), Sprint Communication Company L.P. (Sprint), and The Regional Technical Commission on Telecommunications of Central America (COMTELCA) and the National Telecommunications Institute of Panama (INTEL) (collectively referred to as COMTELCA/INTEL). Oppositions to AT&T's petition were filed by VIA USA, Ltd. (VIA USA), Telegroup, Inc. (Telegroup) and the Telecommunication Resellers Association (TRA).

4. Both VIA USA and Telegroup filed motions to strike the comments filed by MCI, Sprint and COMTELCA/INTEL. AT&T, MCI, Sprint and COMTELCA/INTEL opposed the motions to strike the supporting comments. VIA USA and Telegroup argue in their motions that the comments supporting AT&T's petition are untimely, procedurally defective requests for the Commission to reconsider its initial grant of Section 214 authority to the above-captioned applicants. In particular, VIA USA and Telegroup state that Section 1.106(g) of the Commission's Rules only contemplates the filing of "oppositions" to petitions for reconsideration, not comments in support of such petitions. Further, they state that, in addition to repeating and expounding upon AT&T's arguments in its petition, the COMTELCA/INTEL comments raise new issues relating to the legality of call-back services under international law and the law of foreign countries. Alternatively, VIA USA and Telegroup contend that, if we do not grant their motions to strike, we should extend the reply period several months because COMTELCA/INTEL have raised new arguments not previously raised by any party, which significantly expand the scope of the proceeding.

5. The comments supporting AT&T's petition raise issues involving complex questions of international law, international comity and the law of foreign countries. In particular, COMTELCA/INTEL raise the argument that call-back services employing an uncompleted call signaling configuration violate international law, *i.e.* Article 1.5 and 3.3 of the International Telecommunications Union (ITU) Regulations.[4] In addition, COMTELCA/INTEL's comments also claim that the applicants may not offer uncompleted call signalling services except pursuant to appropriate operating agreements with foreign telecommunications administrations. Moreover, COMTELCA/INTEL have submitted evidence as to the effect that our authorization of this service may have on international comity.[5]

[1] *VIA USA, Ltd et al.*, 9 FCC Rcd 2288 (1994).

[2] *See id.*

[3] In order to develop a complete record on the issues raised by AT&T's petition, we extended on our own motion for 30 days the time for the filing of comments. "Pleading Cycle Extended for Comments on AT&T's Petition for Reconsideration of Commission Order Authorizing Three International Resale Carriers Proposing to Provide 'Call-Back' Services," FCC Report No. I–6991 (released June 22, 1994) (hereinafter referred to as "June 22 Public Notice").

[4] In the initial proceeding, the record did not address the argument that the proposed call-back services violated international law. *See VIA USA, Ltd. et al.*, 9 FCC Rcd at 2292, n. 37.

[5] COMTELCA/INTEL further contend that there are other forms of call-back services that raise similar issues under international law and the law of foreign countries which the Commission did not address in its initial decision. For instance, COMTELCA/INTEL reference the "hot line" method whereby a U.S. reseller continuously places calls to the telephone of a subscriber located outside the United States. The called party's telephone has a disconnected ringer. When the called party wants to access a U.S. dial tone to place an international call to a U.S. location or elsewhere, he or she simply picks up the receiver and "answers" one of several thousand continuous calls

Continued

6. We conclude that the issues raised in the comments supporting AT&T's petition merit examination. Therefore, we will, on our own motion, seek additional comment from the parties and members of the public on all of the issues raised in the comments supporting AT&T's petition.

7. Because we have decided on our own motion to expand the scope of this reconsideration proceeding, we find that the motions to strike the supporting comments of MCI, Sprint and COMTELCA/INTEL are moot. These supporting comments address the issues which we will be examining, and therefore will be made part of the record. We will, however, grant VIA USA's and Telegroup's alternative request that we further extend the period for filing comments. In addition, we will seek the advice of the Department of State regarding the issues of international law, international comity, and the laws of foreign countries. Further, in order to augment the record with respect to AT&T's assertion that uncompleted call signalling violates the federal wire fraud statute, we also will seek the advice of the Department of Justice on this issue. Finally, as noted above, because of the general importance of the issues in this case, we will entertain additional comments from all interested members of the public as well as from the parties to this proceeding.

8. This Section 214 proceeding will continue to be conducted as a non-restricted proceeding in which written and oral *ex parte* contacts are permitted, but subject to disclosure. *See* 47 CFR Part 1206.

9. Accordingly, it is ordered that the comments of MCI, Sprint and COMTELCA/INTEL are accepted into the record of this proceeding, and Telegroup's and VIA USA's motions to strike the comments are dismissed as moot.

10. It is further ordered that this proceeding is opened to the general public and interested persons are invited to file comments on any of the issues raised in AT&T's petition or the supporting comments by October 14, 1994, and reply comments by November 14, 1994.

11. It is further ordered that the Secretary shall serve a copy of this Order on each party to this proceeding by certified mail.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–23102 Filed 9–16–94; 8:45 am]

BILLING CODE 6712–01–M

made to that particular phone during the day and receives a dial tone at the reseller's U.S. location. COMTELCA/INTEL assert that the international law and public interest issues raised by this practice should be addressed in this proceeding, or, alternatively, should be addressed in a rulemaking proceeding that covers the full range of issues raised by the proliferation of call-back methods used to provide U.S. dial tone to foreign parties.

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Revision of a currently approved collection.

Title: Dispute Resolution Neutrals Questionnaire.

Form Numbers: FDIC 8000/01.

OMB Number: 3064–0107.

Expiration Date of OMB Clearance: November 30, 1994.

Respondents: Parties wishing to be considered for inclusion on the FDIC's Roster of Dispute Resolution Neutrals.

Frequency of Response: On occasion.

Number of Respondents: 100.

Number of Responses Per Respondent: 1.

Total Annual Responses: 100.

Average Number of Hours Per Response: 0.5.

Total Annual Burden Hours: 50.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0107, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before November 18, 1994.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The FDIC has developed a Roster of Dispute Resolution Neutrals as part of its Alternative Dispute Resolution (ADR) program. Parties wishing to be considered for inclusion on the Roster must submit a completed questionnaire containing biographical and demographic data. The information obtained from respondents is used to evaluate the candidates' qualifications to serve as neutrals in cases involving ADR.

Dated: September 13, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–23044 Filed 9–16–94; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

First of America Bank Corporation; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 94-21973) published on page 46253 of the issue for Wednesday, September 7, 1994.

Under the Federal Reserve System heading, the entry for First of America Bank Corporation, is revised to read as follows:

1.First of America Bank Corporation, Kalamazoo, Michigan. In addition to the activities listed in the Notice of August 31, 1994, Applicant proposes that Company execute trades for which Applicant's subsidiary banks act as introducing broker.

Comments on this application must be received by October 3, 1994.

Board of Governors of the Federal Reserve System, September 15, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-23253 Filed 9-16-94; 8:45 am]

BILLING CODE 6210-01-F

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer (DLC) will hold its Fall 1994 meeting on Monday, October 24, 1994, through Wednesday, October 26, 1994, in Clackamas, Oregon. The meeting sessions will take place from 8:30 a.m. until 5 p.m. on Monday and

Tuesday and from 8:30 a.m. until 12 noon on Wednesday. The sessions will be held at the Monarch Hotel & Conference Center, 12566 Southeast 93rd Avenue, Clackamas, Oregon 97015, on the outskirts of Portland. The purpose of this meeting is to discuss the Federal Depository Library Program. The meeting is open to the public.

A limited number of hotel rooms have been reserved at the Monarch for anyone needing hotel accommodations. Telephone (800) 492–8700 or (503) 652–1515; fax: (503) 652–7509. Please specify the Depository Library Council when you contact the hotel. Room cost per night is $55.

James N. Joyner,

Deputy Public Printer.

[FR Doc. 94–23145 Filed 9–16–84; 8:45 am]

BILLING CODE 1505–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Solicitation of Nominations for Membership on the U.S. Advisory Board on Child Abuse and Neglect

Purpose

Pursuant to the terms of the Child Abuse Prevention and Treatment Act (the Act), the Department of Health and Human Services is soliciting nominations for three vacancies (seats) on the U.S. Advisory Board on Child Abuse and Neglect (the Board).

Membership

The Board consists of 15 members appointed by the Secretary of Health and Human Services (the Secretary). Thirteen are appointed from the general public and two from the Federal Government. In making all 15 appointments, the Secretary is required by the Act to ensure that ethnic and racial minorities and diverse geographic areas are represented.

All 15 persons appointed must possess general knowledge about child maltreatment (i.e., policy; prevention; intervention; treatment; and research). In addition, among the 13 members from the general public, 11 must represent one of the following areas:

- the legal aspects of child maltreatment;
- the psychological aspects;
- the social services aspects;
- the medical aspects;
- the role of State and local government in the prevention and treatment of child abuse and neglect;
- the role of organizations providing services to disabled persons;
- the role of organizations providing services to adolescents;
- the role of elementary and secondary school teaching;
- the role of parent self-help organizations;
- the role of parents' groups; and
- the role of voluntary groups.

In order to qualify for selection as such a representative, each individual must possess specific knowledge in the area which he/she represents.

Responsibilities and Duties

Among the responsibilities the Act requires the Board to perform is the preparation of an annual report to the Secretary of Health and Human Services, appropriate committees of the Congress, and the Director of the National Center on Child Abuse and Neglect. In addition, the Board holds hearings, conducts symposia, and issues position papers.

In its annual reports, the Board is charged with evaluating the nation's efforts to accomplish the purposes of CAPTA and developing recommendations about ways that those efforts can be improved. The 1990 report of the Board is entitled, Child Abuse and Neglect: Critical First Steps in Response to a National Emergency; the 1991 report, Creating Caring Communities: Blueprint for an Effective Federal Policy on Child Abuse and Neglect; the 1992 report, The Continuing Child Protection Emergency: A Challenge to the Nation; and the 1993 report, Neighbors Helping Neighbors: A New National Strategy for the Protection of Children.

The Board usually meets three times a year, and, occasionally, four times a year. Meetings last three to four days. Between meetings, much of its work is accomplished by conference call. Service on the Board is extremely demanding of both time and effort.

Duties of Board members are:

- to serve as the Board authority in one or more areas of expertise, keeping current on developments in those areas;
- to be conversant with the extensive array of background information provided to members prior to meetings and conference calls;
- to attend meetings;
- to participate in conference calls;
- to suggest materials to staff for distribution as background information;
- to author portions of Board publications;
- to edit Board publications; and
- to avoid all possible conflicts of interest between Board membership and non-Board activities.

Terms of Office

The length of the terms to which persons from the general public are appointed is four years. Once appointed, a person from the general public may be reappointed to one additional term at the discretion of the Secretary.

Nomination

The Department is soliciting nominations for the three seats to be occupied by members possessing specific expertise in:

- the social services aspects of child maltreatment;
- the role of elementary and secondary school teaching; and
- an at-large seat.

The terms of the three seats will expire on May 29, 1999.

Nominations may be made for one's self or for someone else. The same individual may be nominated for a seat in more than one category. Nominations should be made in the form of a letter which indicates the seat or seats for which the nominee is being nominated and provides information about the qualifications for office of the nominee. A current curriculum vita for the nominee should be attached to the letter. (If the nominee is not the person submitting the nomination, a letter from the nominee indicating a willingness to serve should be attached). All nominations will be evaluated. To assist in that evaluation, persons submitting nominations may wish to provide the following kinds of information about the nominee's qualifications:

- What general knowledge about child maltreatment (i.e., policy; prevention; intervention; treatment; and research) does the nominee possess and how has he/she gained that knowledge?
- What specific knowledge does the nominee possess about the aspect of child maltreatment which he/she is being nominated to represent on the Board and how has he/she gained that knowledge? (If the individual is being nominated for more than one seat, separate answers should be provided setting forth the individual's specific knowledge in connection with each seat).
- What materials has the nominee authored, what presentations has he/she made, what meetings has he/she planned, et cetera, which shed light on both the general and/or specific knowledge of the nominee?
- What skills does the nominee possess which will allow him/her to contribute substantially to the conduct of Board business and what highlights and achievements in the nominee's career shed light on such skills?

• Does the nominee possess other abilities which are relevant to his/her appointment to the Board?

• Will the nominee's schedule permit him/her to devote a significant segment of time to Board activities?

• Is the nominee's ethnic or racial background that of an American Indian or Alaskan Native, Asian or Pacific Islander, African-American, or Hispanic?

Each letter of nomination should be accompanied by at least one but no more than three letters of reference attesting to the nominee's qualifications for office. Authors of reference letters may include but are not limited to: elected officials (Federal, State, or local); persons in the field of child maltreatment; and persons in the subject area of the seat being sought.

The Secretary will select the three persons to be named to the Board from among those individuals either who are nominated in response to this announcement or who are otherwise qualified to serve. After the Secretary reaches a decision, those persons selected to serve will receive a letter of invitation. Service will begin on May 29, 1995, or the first Board meeting thereafter.

Nomination packages (letter of nomination; attachment(s); and accompanying letter(s) of reference) must be postmarked no later than October 31, 1994. Packages received with a postmark later than October 31, 1994 will not be considered.

Nominations should be sent to the: U.S. Advisory Board on Child Abuse and Neglect, Room 303–D, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

CONTACT PERSON FOR MORE INFORMATION: Marilyn J. Gosdeck, Program Analyst, U.S. Advisory Board on Child Abuse and Neglect, Room 303–D, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Telephone: (202) 690–8604.

Dated: September 13, 1994.

Preston Bruce,

Executive Director, U.S. Advisory Board on Child Abuse and Neglect.

[FR Doc. 94–23143 Filed 9–16–94; 8:45 am]

BILLING CODE 4184–01–P

Notice of the Third Meeting of the Advisory Committee on Services for Families With Infants and Toddlers

AGENCY: Administration on Children, Youth and Families, ACF, HHS.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to Public Law 92–463, that the Advisory Committee on Services for Families with Infants and Toddlers will hold a meeting on Thursday and Friday, September 22 and 23, 1994, from 9 a.m. to 5 p.m. The meeting will be held at the Rosslyn West Park Hotel, 1900 N. Fort Meyer Drive, Arlington, Virginia.

The meeting of the Committee shall be open to the public. The proposed agenda includes the development of the formative activities for the operation of the Committee.

Records shall be kept of all Committee proceedings and shall be available for public inspection at 330 C Street, SW., Room 2026, Washington, DC 20201.

If a sign language interpreter is needed, contact David Siegel at the address and telephone number below:

FOR FURTHER INFORMATION CONTACT: David Siegel, 370 L'Enfant Promenade, SW., 7th floor, Aerospace Building, Washington, DC 20047 (202) 401–9215.

Dated: September 14, 1994.

Mary Jo Bane,

Assistant Secretary for Children and Families

[FR Doc. 94–23144 Filed 9–16–94; 8:45 am]

BILLING CODE 4184–01–M

Administration on Aging

White House Conference on Aging

AGENCY: White House Conference on Aging, AoA, HHS.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to Title II of the Older Americans Act Amendments of 1987, Public Law 100–175 as amended by Public Law 102–375 and Public Law 103–171, that the 1995 White House Conference on Aging Policy Committee will hold a meeting on Wednesday, October 5, 1994, from 1 p.m. to 4 p.m. The meeting will be held in Room 216, Hart Senate Office Building, Constitution and Delaware Avenues NE, Washington, DC 20510.

The meeting of the Committee shall be open to the public. The proposed agenda includes discussion and voting on the themes and the proposed agenda for publication in the **Federal Register**.

Records shall be kept of all Committee proceedings and shall be available for public inspection at 501 School Street, SW, 8th floor, Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: Marilyn Huddell, White House Conference on Aging, 501 School Street SW., 8th Floor, Washington, DC 20024, 202–245–7845.

Fernando M. Torres Gil,

Assistant Secretary for Aging.

[FR Doc. 94–23129 Filed 9–16–94; 8:45 am]

BILLING CODE 4130–02–M

Agency for Toxic Substances and Disease Registry

[ATSDR–85]

Quarterly Public Health Assessments Completed

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice contains a list of ites for which ATSDR has completed a public health assessment, or issued an addendum to a previously completed public health assessment, during the period April-June 1994. This list includes sites that are on, or proposed for inclusion on, the National Priorities List (NPL), and non-NPL sites for which ATSDR has prepared public health assessments in response to requests from the public (petitioned sites).

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., DEE, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 639–0610.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments, public health assessments with addenda, and petitioned public health assessments which were accepted by ATSDR during January-March 1994, was published in the **Federal Register** on June 28, 1994 [59 FR 33296]. The quarterly announcement is the responsibility of ATSDR under the regulation, Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities [42 CFR Part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended [42 U.S.C. 9604(i)].

Availability

The completed public health assessments are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of

Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 487–4650. There is a charge determined by NTIS for these public health assessments. The NTIS order numbers are listed in parentheses after the site name.

Public Health Assessments or Addenda Completed or Issued

Between April 1, 1994, and June 30, 1994, public health assessments or addenda to public health assessments were issued for the sites listed below:

NPL Sites

Kentucky

National Southwire Aluminum Company—Hawesville—(PB94–178811)

Massachusetts

Nyanza Chemical Waste Dump—Ashland—(PB94–194446)
Sullivan's Ledge—New Bedford—(PB94–178027)

Minnesota

Lake Elmo Airport Groundwater Plume—(a/k/a Baytown Township Groundwater Contamination)—Baytown Township (PB94–165453)
New Brighton/Arden Hills (a/k/a U.S. Army Twin Cities Ammunition Plant)—Arden Hills—(PB94–180775)

New York

Hooker-102nd Street—Niagara Falls—(PB94–165172)
Hooker Chemical/Ruco Polymer—Hicksville—(PB94–173788)
North Sea Municipal Landfill—North Sea—(PB94–178993)
Robintech, Incorporated/National Pipe—Vestal—(PB94–183241)
Sinclair Refinery—Wellsville—(PB94–184017)
Syosset Landfill—Oyster Bay—(PB94–165461)

Ohio

Allied Chemical and Ironton Coke—Ironton—(PB94–178936)
Sanitary Landfill—(a/k/a Cardington Road Landfill)—Dayton—(PB94–178902)

Pennsylvania

Foote Mineral Company—Frazer—(PB94–164217)
Palmerton Zinc Pile—Palmerton—(PB94–161692)
Rodale Manufacturing Company, Incorporated—Emmaus—(PB94–178035)

Texas

Sikes Disposal Pits—Crosby—(PB94–187325)

Wisconsin

Fadrowski Drum Disposal—Franklin—(PB94–183308)
Hagen Farm—Stoughton—(PB94–187671)
Spickler Landfill—Spencer—(PB94–168176)

Petitioned Sites (Non-NPL)

New York

Diarsenol Company (a/k/a Kingsley Park)—Buffalo—(PB94–173770)

Virginia

Bluefield Sites—Bluefield—(PB94–187044)

West Virginia

Bluefield Sites—Bluefield—(PB94–187044).

Dated: September 12, 1994.

David Satcher, M.D., Ph.D.,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 94–23075 Filed 9–16–94; 8:45 am]

BILLING CODE 4163–70–P

[ATSDR–84]

Notice of Availability of Administrative Reports of Health Effects Studies

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the availability of Administrative Reports of six ATSDR health effects studies.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Lybarger, M.D., M.S., Director, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–31, Atlanta, Georgia 30333, telephone (404) 639–6200.

SUPPLEMENTARY INFORMATION: Sections 104(i)(7) and (9) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended [42 U.S.C. 9604(i)(7) and (9)], provide the Administrator of ATSDR with the authority to conduct pilot studies, epidemiologic and other health studies, and to initiate health surveillance programs to determine the relationship between human exposure to hazardous substances in the environment and adverse health outcomes.

On February 13, 1990, ATSDR published in the **Federal Register** [55 FR 5136] a final rule entitled, "Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities." The primary purpose of that rule, which created a new regulation at 42 CFR Part 90, was to set forth general procedures that ATSDR will follow relating to certain agency activities, including the conduct of health effects studies. Section 90.11 of the regulation, which concerns the reporting of results of health assessments and health effects studies, provides that reports of health effects studies conducted under section 104(i) of the CERCLA shall be available to the general public upon request.

Availability

The reports of the health effects studies listed below are now available through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22151, telephone: 1–800–553–6847. There is a charge for these items as determined by NTIS.

Health effects study	NTIS document No.
Priority Health Conditions: An Integrated Strategy to Evaluate the Relationship Between Illness and Exposure to Hazardous Substances. ATSDR/HS–93/30.	PB93–203529
Health Study to Assess Methylmercury Exposure Among Members of the Fond Du Lac Band of Chippewa Indians in Northern Minnesota. ATSDR/HS–94/31.	PB94–134798
The Globeville Childhood Metals Study: An Exposure Study, Denver Colorado. ATSDR/HS–94/32	PB94–136694
Clear Creek/Central City Mine Waste Exposure Study—Part II: Clear Creek/Central City Mine Sites. ATSDR/HS–94/33	PB94–136702
Site-Specific Surveillance Project at the Koppers Co. Inc. National Priorities List Site, Texarkana, Texas. ATSDR/HS–94/34	PB94–154051
Biologic Indicators of Exposure to Cadmium and Lead, Palmerton, Pennsylvania—Part I ATSDR/HS–94/35	PB94–176955

In accordance with 42 CFR 90.11, copies of these final reports have been distributed to the Environmental Protection Agency, the appropriate State and local government agencies, and the affected local communities.

ATSDR previously announced the availability of 29 final reports of health effect studies and a software package for the analysis of disease clusters [55 FR 31445, August 12, 1990; 57 FR 29091, June 30, 1992; 58 FR 29413, May 20, 1993; and 58 FR 63378, December 1, 1993]. Additional final reports will be announced semiannually in the **Federal Register** as they become available.

Dated: September 12, 1994.

David Satcher, M.D., Ph.D.,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 94–23074 Filed 9–16–94; 8:45 am]

BILLING CODE 4163–70–P

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee)

Date, time, and place. October 4, 1994, 9 a.m., Hubert H. Humphrey Bldg., Stonehenge Room, suite 615–F, 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open committee discussion, 9 a.m. to 1:30 p.m.; open public hearing, 1:30 p.m. to 2:30 p.m., unless public participation does not last that long; open committee discussion, 2:30 p.m. to 4 p.m.; Ronald F. Coene, National Center for Toxicological Research (HFT–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3155.

General function of the committee. The committee shall advise the Secretary and the Assistant Secretary for Health concerning its oversight of the conduct of the Ranch Hand Study by the Air Force and other studies in which the Secretary or the Assistant Secretary for Health believes involvement by the advisory committee is desirable.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 23, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will initiate the review of the report analyzing the 1992 health examination of participants in the Air Force Health study entitled "An Epidemiologic Investigation of Health Effects in Air Force Personnel Following Exposure to Herbicides." This review will include the chapters dealing with General Health, Dermatology, Renal Function, and Pulmonary Function. Criteria for release of data sets from previous health examinations conducted for the Air Force Health study will also be discussed. Representatives from the Department of Veterans Affairs will present an outline of their plan for conduct of a health study of Army veterans assigned to Chemical Corps units in Vietnam.

Dental Drug Products Panel Plaque Subcommittee (Nonprescription Drugs) of the Medical Devices Advisory Committee

Date, time, and place. October 11 and 12, 1994, 9 a.m., Holiday Inn—Silver Spring, International Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open committee discussion, October 11, 1994, 9 a.m. to 12 m.; open public hearing, 12 m. to 3 p.m., unless public participation does not last that long; open committee discussion, 3 p.m. to 5 p.m.; open committee discussion, October 12, 1994, 9 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 4 p.m.; Jeanne L. Rippere or Stephanie A. Mason, Center for Drug Evaluation and Research (HFD–813), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–1003.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

The Dental Products Panel of the Medical Devices Advisory Committee functions at times as a nonprescription drug advisory panel. As such, the panel reviews and evaluates available data concerning the safety and effectiveness of active ingredients, and combinations thereof, of various currently marketed nonprescription drug products for human use, the adequacy of their labeling, and advises the Commissioner of Food and Drugs on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on the general issues pending before the subcommittee. Those desiring to make formal presentations should notify the contact person before September 30, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The subcommittee will continue with its discussions held during the June 28 and 29, 1994, meeting as follows: (1) The possible relationship of alcohol-containing mouthwashes to the development of oral and pharyngeal cancers, and (2) work on developing general guidelines for determining the safety and effectiveness of antiplaque and antiplaque-related drug products. The subcommittee will also work on a draft document to be presented to the Dental Products Panel at a future meeting.

Dental Device Ingredient Labeling Subcommittee of the Dental Products Panel of the Medical Devices Advisory Committee

Date, time, and place. October 12, 1994, 9 a.m., Gaithersburg Hilton Hotel, Salon C, 620 Perry Pkwy., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the Gaithersburg Hilton Hotel. Attendees requiring overnight accommodations may contact the hotel at 301–977–8900 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Carolyn A. Tylenda, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD, 301–594–3090.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 1, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss dental device ingredient labeling.

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. October 13 and 14, 1994, 9 a.m., National Institutes of Health, Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, October 13, 1994, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, October 14, 1994, 9 a.m. to 5 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 419–259–6211 or Valerie M. Mealy, Advisors and Consultants Staff, 301–443–4695.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in cardiovascular and renal disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 1, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 13, 1994, the committee will discuss drug interactions and antianginal guidelines. On October 14, 1994, the committee will discuss the new drug application (NDA) 20–377 for Cordarone®, I.V. amiodarone HCl, Wyeth-Ayerst Laboratories, to be indicated for life-threatening arrhythmias.

Dental Products Panel of the Medical Devices Advisory Committee

Date, time, and place. October 13 and 14, 1994, 9 a.m., Gaithersburg Hilton Hotel, Salon C, 620 Perry Pkwy., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the Gaithersburg Hilton Hotel. Attendees requiring overnight accommodations may contact the hotel at 301–977–8900 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, October 13, 1994, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open public hearing, October 14, 1994, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 3 p.m., Carolyn A. Tylenda, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD, 301–594–3090.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 1, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 13 and 14, 1994, the committee will discuss: (1) Classification of muscle monitor devices; (2) reclassification of dental mercury; (3) bone filling and augmentation materials; (4) dental device ingredient labeling; and (5) draft guidance documents for dental endosseous implants and temporomandibular joint implants. Copies of the draft guidance documents are available from the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 800–638–2041 or 301–443–6597.

Blood Products Advisory Committee

Date, time, and place. October 20 and 21, 1994, 8 a.m., Holiday Inn—Silver Spring, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open committee discussion, October 20, 1994, 8 a.m. to 9:20 a.m.; open public hearing, 9:20 a.m. to 9:40 a.m., unless public participation does not last that long; open committee discussion, 9:40 a.m. to 11:40 a.m.; open public hearing, 11:40 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 2:30 p.m.; open public hearing, 2:30 p.m. to 3 p.m., unless public participation does not last that long; open committee discussion, 3 p.m. to 5 p.m.; open committee discussion, October 21, 1994, 8 a.m. to 9:30 a.m.; open public hearing, 9:30 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 12:30 p.m.; Linda A. Smallwood, Office of Blood Research and Review (HFM–300), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–594–6700.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 10, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 20, 1994, the committee will

discuss and provide recommendations for: (1) Revised donor testing and suitability criteria related to the use of treponemal screening tests for syphilis, (2) issues related to the dating period for irradiated red blood cells, and (3) issues concerning donor suitability. On October 21, 1994, the committee will discuss public health issues related to the use of gloves by phlebotomists in blood establishments.

Hematology and Pathology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. October 21, 1994, 10 a.m., Holiday Inn—Gaithersburg, Walker and Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the Holiday Inn—Gaithersburg. Attendees requiring overnight accommodations may contact the hotel at 301–948–8900 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, 10 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 4 p.m., Djuana Blagmon, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–2096.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 14, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the classification of immunohistochemical devices.

Science Board to the Food and Drug Administration

Date, time, and place. October 21, 1994, 8:30 a.m., Bethesda Ramada Hotel and Conference Center, Ambassador Ballrooms I and II, 8400 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open committee discussion, 8:30 a.m. to 2:30 p.m.; open public hearing, 2:30 p.m. to 3:30 p.m., unless public participation does not last that long; open committee discussion, 3:30 p.m. to 6 p.m.; Neil L. Wilcox, Office of the Senior Advisor for Science (HF–33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5839.

General function of the board. The board shall provide advice primarily to the agency's Senior Science Advisor and, as needed, to the Commissioner and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in industry and academia. Additionally, the board will provide advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science; on formulating an appropriate research agenda; and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of agency sponsored intramural and extramural scientific research programs.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the board. Those desiring to make formal presentations must notify the contact person before October 7, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants. Each presenter will be limited in time and not all requests to speak may be able to be accommodated. All written statements submitted in a timely fashion will be provided to the board.

Open committee discussion. The board will continue to discuss issues related to the test strategy for toxicity and carcinogenicity of substances regulated by FDA. The primary agenda item will consist of short presentations followed by general discussion on the development and validation of alternatives to the 2-year rodent carcinogenicity assay.

National Task Force on AIDS Drug Development

Date, time, and place. October 27, 1994, 9:30 a.m., October 28, 1994, 8:30 a.m., The Hyatt Regency—Crystal City, Regency Rooms C and D, 2799 Jefferson Davis Hwy., Arlington, VA.

Type of meeting and contact person. Open task force discussion, October 27, 1994, 9:30 a.m. to 4:30 p.m.; open public hearing, 4:30 p.m. to 5:30 p.m., unless public participation does not last that long; open task force discussion, October 28, 1994, 8:30 a.m. to 11:30 a.m.; Jean H. McKay or Kimberley M. Miles, Office of AIDS and Special Health Issues (HF–12), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0104.

General function of the task force. The Task Force on AIDS Drug Development shall identify any barriers and provide creative options for the rapid development and evaluation of treatments for human immunodeficiency virus (HIV) infection and its sequelae. It also advises on issues related to such barriers, and provides options for the elimination of these barriers.

Open task force discussion. The task force will present, hear, and discuss issues on the barriers to acquired immune deficiency syndrome (AIDS) drug development from the perspective of task force members, members of the Federal government, and the public. The task force will determine how to proceed with overcoming the barriers to AIDS drug development.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the task force. Those desiring to make formal presentations should notify the contact person before October 19, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee

chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: September 13, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–23151 Filed 9–16–94; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Final Program Requirements and Review Criteria for Cooperative Agreements for Centers for Medical Education Research for Fiscal Year 1994

The Health Resources and Services Administration (HRSA) announces the final program requirements and review criteria for fiscal year (FY) 1994 Cooperative Agreements for Centers for Medical Education Research. These cooperative agreements are funded under the authority of section 781, title VII of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992.

Section 781 authorizes research on certain health professions issues. For this cooperative agreement program, research focuses on the medical education aspects of this legislation and "medical education" is defined as education provided to individuals working toward the M.D. or D.O. degree, or as post-graduate M.D./D.O. education in an accredited residency or fellowship program.

Purpose

The purpose of the Cooperative Agreements for Centers for Medical Education Research is to support research in medical education, especially regarding existing or proposed federal policies and programs and regarding the impact of Federal initiatives aimed at improving the training of health professionals and at meeting national workforce goals.

Section 781 of the Public Health Service Act authorizes the Secretary to award cooperative agreements for the purpose of:

(a) conducting research on the extent to which the debt incurred by medical students for attendance at educational institutions has had a detrimental effect on the decisions made by the students on entering primary care specialties;

(b) conducting research on the effects that federally-funded educational programs or policies for minority or disadvantaged individuals have on:

(A) the number of such individuals attending health professions schools;

(B) the number of such individuals completing the programs of education involved; and

(C) the decisions made by such individuals on which of the health professions specialties to enter;

(c) conducting research on the effectiveness of the States in protecting the public health through:

(1) identifying health care providers with respect to whom investigations of professional qualifications are warranted;

(2) conducting such investigations; and

(3) taking disciplinary actions against health care providers determined through such investigations to have engaged in conduct inconsistent with protecting the public health;

(d) conducting research:

(A) to determine the extent to which Federal programs and related financial incentives influence the percentage of medical school graduates selecting a primary care career;

(B) to determine the extent to which Federal programs and related financial incentives adequately support the training of mid-level primary care providers relative to other health professions education receiving Federal assistance;

(C) to assess the impact that direct and indirect payments for graduate medical education (including the appropriateness of payments for independent, ambulatory training sites) have on increasing the percentage of physicians graduating from medical school who enter primary care careers;

(D) to assess the impact of medical school admissions policies on specialty selection and recommend ways admission policies can better facilitate and promote the selection of primary care as a medical career;

(E) to assess the impact of Federal funding for biomedical research on the design of medical school curriculum and the availability of primary care educational opportunities;

(F) to assess the impact of medical school curriculum, including the availability of clinical training in ambulatory care settings, on the percentage of physicians selecting primary care residencies and selecting primary care as a medical career; and

(G) to assess the extent to which current physician payment policies under resource based relative value scale are sufficient to encourage physicians graduating from medical school to enter and remain in primary care careers.

In conducting research relative to effect of programs for minority and disadvantaged individuals, the

applicant will make findings specific to the following categories of health professions schools:

(A) Health professions schools of historically black colleges and universities.

(B) Other health professions schools attended by a substantial number of minority individuals.

(C) Health professions schools generally.

Eligibility

Eligible applicants include public and non-profit private entities.

This program was announced in the **Federal Register** at 59 FR 32444, dated June 23, 1994. The program requirements and review criteria were proposed for public comment. No comments were received during the 30 day comment period. Therefore, the program requirements and review criteria remain as proposed.

Final Program Requirements

The award recipient shall participate in the cost of the program as follows: For each year funds are awarded under this program, the matching contribution sha[11] be at least one-third of the amount of the Federal award for that year. Up to 50% of the recipient's matching contribution may be in the form of in-kind donations of faculty time, staff time, use of computers or other shared resources.

In addition, each applicant shall evidence that training related to medical education research is occurring or is planned by the organization.

Final Review Criteria

The review of applications will take into consideration the following criteria:

(1) The qualifications and achievements of the proposed center's principal investigator and senior researchers, including level of productivity and quality of research in medical education;

(2) Demonstration of an understanding of the particular subject areas of medical education research that are relevant to Federal policies and evidence of ability to manage research in such areas;

(3) The appropriateness of the time commitments of the principal investigator and senior researchers;

(4) The strength of the applicant's plan to actively promote dissemination of research findings to all health professionals involved in education and training—including those whom are primarily practitioners, and to relevant policy makers;

(5) The appropriateness of the proposed budget;

(6) The planned level of commitment to the center from the applicant institution, as evidenced by specific plans for the type of financial support that will be offered, and for support of the organizational structure of the center. Evidence of a prior institutional commitment to generalizable research in medical education will also be sought;

(7) The past success and future potential of the proposed center's researchers in receiving funding from other sources; and

(8) The likely effectiveness of the organizational and management arrangements to operate the proposed center.

Additional Information:

If additional programmatic information is needed, please contact: Dr. Brian Goldstein, Office of Health Professions Analysis and Research, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–47, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6936, FAX: (301) 443–0463.

This program, Cooperative Agreements for Centers for Medical Education Research, is listed at 93.222 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: September 13, 1994.

James A. Walsh,

Acting Administrator.

[FR Doc. 94–23094 Filed 9–16–94; 8:45 am]

BILLING CODE 4160–15–P

Public Health Service

Notice Regarding Section 602 of the Veterans Health Care Act of 1992 Outpatient Hospital Facilities

AGENCY: Public Health Service, HHS.

ACTION: Final notice.

SUMMARY: Section 602 of Public Law 102–585, the "Veterans Health Care Act of 1992" (the "Act"), enacted section 340B of the Public Health Service Act ("PHS Act"), "Limitation on Prices of Drugs Purchased by Covered Entities." Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a pharmaceutical pricing agreement (the "Agreement") with the Secretary, Department of Health and Human Services, in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed the amount determined under a statutory formula.

The purpose of this notice is to inform interested parties of final program guidelines concerning the inclusion of outpatient disproportionate share hospital (DSH) facilities in the PHS drug discount program.

FOR FURTHER INFORMATION CONTACT: Marsha Alvarez, R. Ph., Director, Office of Drug Pricing, Bureau of Primary Health Care, 4350 East West Highway, West Tower, 10th Floor, Bethesda, MD 20814, tel: (301) 594–4353.

EFFECTIVE DATE: October 19, 1994.

SUPPLEMENTARY INFORMATION:

(A) Background

Proposed guidelines were announced in the **Federal Register** at 59 FR 29300 on June 6, 1994. A period of 30 days was established to allow interested parties to submit comments. The Office of Drug Pricing received 8 letters with comments concerning legal authority for developing the proposed guidelines. responsibility for determining eligibility, the inclusion of non-traditional outpatient facilities, the need for a definition of eligible hospital facility, ambiguity in the policies of the Health Care Financing Administration (HCFA) regarding the Medicare cost report, possible exceptions for unique circumstances, a retroactive effective date, and general comments concerning the definition of "patient" and a contracted pharmacy service mechanism.

The following section presents a summary of all major comments, grouped by subject, and a response to each comment. All comments were considered, and the guideline is adopted as proposed, with minor changes to increase clarity.

(B) Comments and Responses

Comment: Manufacturers should not be required to provide discounts to outpatient facilities that are included on the Medicare cost reports of eligible DSHs until the PHS Office of Drug Pricing includes the names of the eligible outpatient facilities on the master list of eligible covered entities.

Response: When an eligible DSH submits the list of all outpatient facilities (on-site and off-site) included on its Medicare cost report and Medicaid billing status information to the Office of Drug Pricing and the Office adds these facilities to the master list of eligible and participating entities during regular quarterly updates, the facilities will then be able to access PHS discount

pricing. This information will be posted on the Electronic Data Retrieval System (EDRS), maintained by the Office of Drug Pricing. To access this information call (301) 594–4992.

Comment: The proposed guidelines have created a new definition of "DSH" which appears to be within the realm of legislating as opposed to rulemaking.

Response: Section 340B(a)(4) of the PHS Act lists the various groups of entities eligible to receive PHS discount pricing. Section 340B(a)(4)(L) describes a subset of "hospitals" as defined in section 1886(d)(1)(B) of the Social Security Act as eligible to participate in the program. Because section 1886 addresses Medicare payment for hospital inpatient services only, the scope of the term "hospital" has been limited to the hospital inpatient services. However, section 340B deals exclusively with outpatient drugs. Although Congress clearly intends this narrow definition be used to identify the Medicare disproportionate share hospitals which are eligible for section 340B drug discounts, we do not believe it is reasonable to use this same definition to limit where the section 340B outpatient drugs can be used. Some disproportionate share hospitals offer outpatient services in off-site or satellite outpatient facilities. Further, the movement of nonprofit hospitals in recent years has been to reorganize and offer a variety of services, other than traditional inpatient hospital services, through separate divisions, lines of business, or entities. Therefore, for purposes of section 340B drug discounts, a further interpretation of "hospital" is needed.

Comment: In some instances, the Medicare cost report does not include all of the clinics and services which should be eligible for the PHS discount pricing. For example, hospitals refer patients for specific types of treatments to other hospitals, such as large teaching hospitals which have specialized equipment and medical personnel. Further, hospitals are establishing separate primary care services in different areas of the community. These facilities are often free-standing and not included on the DSH Medicare cost report, but generally are customers of the hospitals and have limited financial resources.

Response: Although it is understandable that the DSH would desire to obtain PHS pricing for these various facilities, the statute clearly states that it is only the DSH that qualifies for discount pricing. We have attempted to define DSH in a manner consistent with HCFA policy guidelines (Provider Certification, State Operation Manual, section 2024). Only outpatient facilities which are an integral component of the DSH will be included on the DSH Medicare cost report, and only these facilities will be eligible for PHS discount pricing.

Comment: The proposed guidelines would permit any health care entity, by means of its business relations with other health care entities, to make itself eligible for PHS pricing. Any clinic, facility, or community hospital affiliated with a DSH could consolidate its cost reporting requirements and use the Medicare provider number of the DSH to make itself eligible for PHS pricing. This is not consistent with Congress's intent in precisely defining a list of entities eligible for the PHS discount pricing.

Response: Congress referred to section 1886 of the Social Security Act (Medicare inpatient hospital payment) for the definition of DSH; therefore, it is reasonable to utilize existing Medicare rules to determine eligibility for PHS discount pricing. The proposed Medicare cost report test was developed by Medicare officials and used, in part, to determine whether a facility is a component of a hospital. If an outpatient facility does not share in the hospital cost report, it is properly viewed as an independent, free-standing facility.

When a DSH attempts to certify multiple components as a single hospital for purposes of Medicare certification, it must follow guidelines developed by HCFA. These guidelines (Provider Certification, State Operation Manual, section 2024) establish tests to determine whether an additional hospital facility, geographically separated but in the same metropolitan area, is a separate facility from or a component of a single hospital. These tests include: (a) all components subject to the control and direction of one common owner (i.e., governing body) which is responsible for the operational decisions of the entire hospital enterprise; (b) one chief medical officer who reports directly to the governing body and who is responsible for all medical staff activities of all components; (c) integration of the organized medical staff (e.g., all medical staff members having privileges at all components); and (d) one chief executive officer through whom all administrative authority flows and who exercises control and surveillance over all administrative activities of all components. This does not preclude the establishment of a deputy or assistant executive officer position.

If the off-site clinic meets these tests, it would be included in the DSH Medicare cost report. This test clearly determines whether a facility is an integral part of a DSH hospital, and is an appropriate standard to determine eligibility, It incorporates Medicare criteria that are not ambiguous and forms an independent and objective basis on which to determine eligibility.

Comment: The proposed guidelines should be applied uniformly to all DSH outpatient facilities, regardless of whether they fit the common perception of a traditional hospital outpatient clinic (e.g., include facilities that serve prison inmates, HMOs, home infusion and home health patients). Anything short of this would be extremely difficult to administer since separating traditional from non-traditional facilities would be a highly subjective and time-consuming exercise. Further, PHS should include in the final notice a specific definition for eligible "outpatient facility."

Response: Section 340B(b) of the PHS Act refers to section 1927(k) of the Social Security Act for the definition of "covered outpatient drug." This definition does not include any limitations on outpatient settings, and there is no requirement that the covered drug be used in a "traditional" outpatient setting. Any outpatient facility included on an eligible DSH's Medicare cost report can access PHS pricing if it is included on the master list of eligible entities.

Comment: There are certain circumstances which might prevent an otherwise eligible outpatient facility from billing under the DSH's provider number (e.g., State or local laws requiring a facility or pharmacy to bill all third party payers directly). In these instances, the facility should be permitted to access PHS discount pricing if the eligible DSH facility can demonstrate that the pharmacy would meet the proposed Medicare test but for the unique circumstances.

Response: The test used to determine the eligibility of hospital outpatient facilities must incorporate criteria that form an independent and objective basis. This will provide fair and easy administration. To include a "but for" test would create a difficult standard to administer. If an outpatient facility is not included on the eligible DSH's Medicare cost report, it will not meet the requirements for eligibility.

Comment: The effective date of this notice should be made retroactive to December 1, 1992. Further, the June 13 deadline for requesting retroactive rebates or credits should be extended.

Response: In a **Federal Register** notice, dated May 13, 1994, a deadline was announced for requesting retroactive discounts. Eligible and

potentially eligible covered entities could request these discounts until June 13, 1994. *See* 59 FR 25112. The notice permits an off-site outpatient DSH facility to receive retroactive discounts if it meets the following requirements: (1) is included on an eligible DSH's Medicare cost report, (2) has not participated in a group purchasing arrangement for covered outpatient drugs, (3) has not billed Medicaid for the covered outpatient drugs for which retroactive discounts are being requested, and (4) has preserved its right to such discounts by sending manufacturers a letter requesting such refunds and providing adequate documentation of drug purchases by June 13, 1994. After this date, the right to retroactive discounts ceased. *See* 59 FR 25112. ("Any DSH outpatient clinic which is or will be eligible for retroactive discounts may preserve its right by sending manufacturers a letter requesting such refunds and providing adequate documentation of purchases.")

Comment: There is no definition of the term "patient," thereby permitting a DSH to distribute discounted drugs to virtually anyone it can argue is a patient without running afoul of the drug resale prohibition of section 340B(a)(5)(B) of the PHS Act.

Response: PHS will address this issue in a future **Federal Register** notice which will request public comment. All comments concerning the definition of "patient" will be addressed at that time.

Comment: PHS has approved a contracted pharmacy service model without public notice and an opportunity to comment.

Response: PHS will discuss the contracted pharmacy service model in a future **Federal Register** notice which will invite public comment. All comments concerning this issue will be addressed at that time.

(C) DSH Outpatient Facility Guidelines

Set forth below are the final guidelines regarding the inclusion of DSH outpatient facilities: The outpatient facility is considered an integral part of the "hospital" and therefore eligible for section 340B drug discounts if it is a reimbursable facility included on the hospital's Medicare cost report. For example, if a hospital with one Medicare provider number meets the disproportionate share criteria and this hospital has associated outpatient clinics whose costs are included in the Medicare cost report, these clinics would also be eligible for section 340B drug discounts. However, free-standing clinics of the hospital that submit their own cost reports using different Medicare numbers (not under the single hospital Medicare provider number) would not be eligible for this benefit.

A DSH, eligible for PHS pricing, must first request that the Office of Drug Pricing include in the PHS drug discount program the outpatient facilities that are included in its Medicare cost report. A list of these outpatient facilities along with Medicaid billing status information must be included with the request. Second, an appropriate official of the DSH must sign a statement that he/she is familiar with HCFA guidelines concerning Medicare certification of hospital components as one cost center, has examined the list of outpatient facilities, and certifies that the facilities are correctly included on the DSH's Medicare cost report. When these facilities are added to the master list of eligible and participating covered entities, the off-site facilities will be able to access PHS discount pricing. On-site clinics that are not included on the Medicare cost report will not be eligible for PHS discount pricing. This information will be posted on the Electronic Data Retrieval System (EDRS), maintained by the Office of Drug Pricing, on a quarterly basis. To access this information, call (301) 594–4992.

DSHs which have questions concerning this process, or manufacturers which have questions concerning the eligibility of certain DSH outpatient clinics, should contact Elizabeth Hickey (301–594–4353), at the Office of Drug Pricing.

Dated: September 13, 1994.

James A. Walsh,

Acting Administrator, Health Resources and Services Administration.

[FR Doc. 94–23095 Filed 9–16–94; 8:45 am]

BILLING CODE 4160–15–P

Social Security Administration

Privacy Act of 1974; Computer Matching Programs (SSA/Bureau of Prisons)

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Computer Matching Program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget. The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–5138 or writing to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program and Integrity Reviews as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503) amended the Privacy Act (5 U.S.C. 552a) by adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements.

(3) Furnish detailed reports about matching programs to Congress and the Office of Management and Budget;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: September 9, 1994.

Shirley S. Chater,

Commissioner of Social Security.

Notice of Computer Matching Program, Bureau of Prisons (BOP) Inmate Central Records System With the Social Security Administration (SSA)

A. Participating Agencies

SSA and BOP.

B. Purpose of the Matching Program

Section 202(x)(1) of the Social Security Act (the Act) requires SSA to suspend old-age, survivors and disability insurance benefits of certain prisoners. Section 1611(e)(1)(A) of the Act provides, with some exceptions, that inmates in public institutions are not eligible for payments under the supplemental security income program.

The purpose of this matching program is to assist SSA in enforcing these provisions.

C. Authority for Conducting the Matching Program

Sections 202(x)(1), 1611(e)(1)(A), 202(x)(3) and 1631(f) of the Act.

D. Categories of Records and Individuals Covered by the Matching Program

BOP will submit names and other identifying information of prisoners from its Inmate Central Records System. The SSA master files of Social Security number (SSN) holders contain the SSNs and identifying information for all SSN holders. The SSA master beneficiary record and supplemental security income record contain beneficiary and payment information.

E. Inclusive Dates of the Match

The matching program shall become effective 40 days after a copy of the agreement, as approved by the Data Integrity Boards, is sent to Congress and the Office of Management and Budget (OMB) (or later if OMB objects to some or all of the agreement), or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR DOC. 94–23147 Filed 9–16–94; 8:45am]

BILLING CODE 4190–29–P

Process Reengineering Program; Disability Reengineering Project Plan

AGENCY: Social Security Administration, HHS.

ACTION: Announcement of the plan for a new disability claim process.

SUMMARY: The Social Security Administration (SSA) announces a plan to redesign the claim process for Social Security Disability Insurance and Supplemental Security Income (SSI) disability benefits. This notice contains the plan, as well as background information. The aim of the plan is to achieve dramatic improvements in service to claimants filing for disability benefits and restore public confidence in SSA's disability programs.

FOR ADDITIONAL COPIES CONTACT: Social Security Administration, PO Box 17052, Baltimore, MD 21235, (410) 966–8255. The plan is available in alternative formats for visually impaired individuals. Please use this same telephone number to request a copy of the plan in an alternative format.

SUPPLEMENTARY INFORMATION:

Background—What is the Process Reengineering Program?

SSA began an Agency-wide program of Process Reengineering in the summer of 1993. The Process Reengineering Program is one way that SSA is seeking to improve its overall delivery of service to the public.

The Process Reengineering Program essentially asks the question, "If SSA had the opportunity today to design its processes, what would they look like?" In other words, "how would we design a process if we were starting over?" The Programs objective is to fundamentally rethink and radically redesign SSA's processes to achieve dramatic improvements in critical measures of performance such as quality of service, speed and efficiency. The ultimate goal is to achieve dramatically improved levels of service from the customer's perspective while enriching and improving the work lives of employees.

The Process Reengineering Program is the culmination of an investigation by SSA of the reengineering efforts conducted by private companies, public organizations, academic institutions, and consulting firms with "hands on" experience. The positive findings from that investigation, combined with concerns about the impact of current and projected workloads, led SSA to conclude that a disability claims process reengineering effort was critical to its objectives of providing world-class service to the public and restoring public confidence in its disability programs.

Based on analysis of what has worked best in other organizations, SSA developed a customized reengineering methodology. This methodology used a team approach (composed of SSA and State Disability Determination Service (DDS) employees) and combined a strong customer focus with classic management analysis techniques to intensely review a single business process. While the reengineering team was comprised of employees who were knowledgeable about the current disability process, the methodology focused heavily on obtaining the views of a broad segment of individuals, groups and organizations involved both internally and externally to the process.

What Does the Disability Reengineering Project Address?

Despite the outstanding efforts of SSA and State DDS employees throughout the country, the Agency continues to have difficulty providing a satisfactory level of service to claimants filing for disability benefits. The steps in the current disability process have not changed in any important way since the beginning of the Disability Insurance program in the 1950s. Yet, case loads, types of disabilities, and the demographic characteristics of individuals with disabilities who are potentially eligible for benefits have changed radically.

The State DDSs make the initial decisions about whether an applicant for Disability Insurance or SSI benefits is disabled. In Fiscal Year (FY) 1995, it is estimated that SSA will forward 2.9 million initial disability claims to the DDSs for disability determinations—a 69 percent increase over FY 1990 levels. Similarly, the number of requests for an administrative law judge hearing on denied claims is expected to increase to 542,000, a 75 percent increase over FY 1990 levels. Recent management initiatives to improve service through resource reallocations and productivity enhancements have not been sufficient to deal successfully with the workload demands and it is expected that disability processing times and backlogs will continue to grow under the present process.

The result is that many claimants have to wait much too long at each stage of the process. SSA and State DDS employees are working longer and harder, while becoming increasingly frustrated about their inability to provide the type of service the public deserves.

For these reasons, the first SSA reengineering project focused on the process of filing for benefits—beginning with the initial claim and continuing through the payment of benefits or the final administrative appeal—under both the Disability Insurance program and

the disability portion of the SSI program.

The parameters set for this first project restricted the team from proposing any changes to the statutory definition of disability or the amount of benefits for which individuals are eligible. The project also did not address vocational rehabilitation, work incentives or continuing disability reviews as these issues are being addressed by SSA in other ways.

How Was the Disability Process Reengineering Project Accomplished?

The Disability Process Reengineering Project began in October 1993 when a team of 18 Federal and State employees came together for the purpose of reengineering the initial and administrative appeals system for determining an individual's entitlement to Disability Insurance and SSI disability payments. After completing their initial tasks of analyzing the current process, obtaining process improvement recommendations from over 3,600 individuals and groups internal and external to the disability claim process, benchmarking with public and private sector organizations to identify "best practices," and modeling theoretical processes via computer, the team presented an initial proposal on March 31, 1994. (A copy of this proposal was published in the **Federal Register**, Vol. 59, No. 73, on Friday, April 15, 1994.) The team distributed the proposal widely throughout SSA, the State DDSs, and to interested public and private individuals and organizations and asked the audience for reactions to the proposal, items of concern, and additional ideas for improvement.

During the comment period that began on April 1, 1994, and ended on June 14, 1994, the team received over 6,000 written responses from SSA and DDS employees, employee unions, professional associations, members of the public, claimant representatives, physicians, State governors, claimant advocacy groups, Federal entities, and other interested parties. Members of the team read and analyzed every one of the comments so that no idea, reaction or nuance would be overlooked. Group employee feedback discussions were held in over 80 sites across the country to facilitate dialogue with almost 2,000 SSA and DDS employees. In addition, team members conducted briefings and spoke with more than 3,000 individuals about their reactions to the proposal during this period. A public forum was also held in Washington, D.C. A summary of the comments received is provided in Appendix III of the attached plan.

After considering all comments, the team reviewed the breadth of the initial proposal to determine concepts that needed to be revised, language that needed to be clarified, and details that needed to be added. On June 30, 1994, the team submitted its revised proposal to the Commissioner of Social Security. Subsequently, after careful consideration, on September 7, 1994, the Commissioner released SSA's Plan for a New Disability Claim Process. Accepting all of the concepts contained in the team's June 30 revised proposal as SSA's plan, the Commissioner released the redesign plan with the understanding that certain concepts (primarily aspects of the simplified disability methodology) would require extensive research and testing before determining how quickly they could be implemented.

What Service Improvements Does the Plan for a New Disability Claim Process Offer?

The Commissioner established five primary objectives against which SSA will measure the success of a redesigned disability claim process:

— The process is user friendly for claimants and those who assist them;
— The right decision is made the first time;
— Decisions are made and effectuated quickly;
— The process is efficient; and
— Employees find the work satisfying.

By focusing on these objectives, the redesigned process replaces an existing process that is slow, labor-intensive, and paper reliant with a seamless claim process that makes better use of technology, eliminates fragmentation and duplication, promotes more flexible use of resources, and results in dramatic improvements in public service. With the redesign plan, SSA has embarked on an era of change that will revitalize and streamline the way it delivers disability claim service to the public to achieve greater quality, speed and efficiency.

Specific customer focused improvements that the plan will offer include a process that will:

- Be a user-friendly, more accessible and customer focused process, that ensures benefits are paid to all eligible individuals as quickly as possible. Case processing times will be cut in half once the new process is fully implemented;
- Provide complete and accurate consumer-oriented information to applicants throughout the process and allow individuals who are able to be full partners in the processing of their claim;
- Utilize modern technology and highly skilled and trained employees to deliver high-quality service in an accountable, cost-efficient manner;
- Implement a comprehensive quality assurance program that continually strives to improve operational excellence and the level of service that disability applicants receive; and
- Use education and training opportunities to enrich employees jobs, increase their job satisfaction and quality of work life.

A detailed description of the redesigned disability claim process is included in the attached plan.

What Happens Next?

SSA will move quickly to begin implementing the redesigned disability claim process. Some new process features, involving research and changes to regulations and computer systems, necessitate a phased-in approach. Other new process features can be implemented in the near-term and, when combined with special short-term initiatives to address case backlogs, will result in better service for individuals currently filing for disability benefits. The goal is to make near-term, visible improvements while at the same time building for long-term results.

SSA will make an unprecedented effort to conduct a full and open dialogue with both SSA and non-SSA audiences as the Agency moves through the implementation phase. The Agency will use all appropriate modes of communication to ensure that necessary information about implementation activities is regularly and widely disseminated and will develop appropriate feedback channels to permit the meaningful exchange of information.

Dated: September 7, 1994.

Rhoda M. G. Davis,

Director, Process Reengineering Program.

Message From the Commissioner

Social Security Administration's Plan for a New Disability Claim Process

It was 10 months ago that I challenged this Agency to restore public confidence in its programs, provide world-class service to its customers, and ensure a nurturing environment for its employees. While there is much left to be done to meet these goals, I am proud to say that with the release of this document we have reached a major milestone toward meeting the challenges I set forth.

This document lays the foundation for the new disability claim process. It is a solid foundation upon which to build—it provides a broad description of the

new process, with the detailed elements of the process to be developed.

The new design gives us the opportunity to develop relationships with the public and our employees that are based on open communication, partnership, and the belief that our customers need to be provided as much information as possible about the process and the program. I believe this new design holds the potential to provide the world-class service I pledged to furnish the American people—it will be user-friendly, it will ensure the right decision is made the first time, it will allow decisions to be made and effectuated quickly, and it will be an efficient process. Just as importantly, the new design will also provide our employees with a nurturing environment through empowerment, education, challenge, career opportunity, and professionalism.

As the discussions about our reengineering effort and the future of the disability claim process evolved, I listened to the issues and opinions and the hopes and fears that have been expressed. I heard from SSA and State employees, the public, members of Congress, representatives of other Federal agencies, State officials, union representatives, and various experts in the disability field. I believe that everyone wants something better for the American people. I am convinced that we must be bold in our efforts. Therefore, I have chosen to accept the recommendations of the Agency's Disability Process Reengineering Team which were presented to me on June 30, 1994, with the full understanding that certain aspects of the decisional methodology will require extensive research and testing to determine whether they can be implemented. Because those aspects of decisional methodology that deal with functional assessment, baseline of work, and the evaluation of age require much study and deliberation with experts and consumers, we are making no conclusions about their ultimate place in the disability process. Our implementation plans include the research needed to begin in this area. As more is known, we will reevaluate our planning assumptions. Until then, the concept of a single person as the disability claim manager for all cases cannot be fully implemented. Instead, we will seek ways of working in teams to provide claimants with the level of service they seek.

The cost of redesigning our disability claim process will not be inexpensive; however, the tangible savings will be worth the investment. The workyear savings will allow us to use current staff to accomplish other pressing workloads and activities of the Agency while avoiding new hiring to replace all those who retire or otherwise leave on their own accord. Thus, we will be able to do our part to reduce the Federal workforce overall. Additionally, with these savings will come such intangibles as improved customer service, an empowered and better trained workforce, and increased public confidence in the process.

It is now time for us to move forward with concrete actions to begin the actual redesign of the way we do business in our disability programs. On July 12, 1994, I announced that Charles A. (Chuck) Jones, the Director of the Michigan Disability Determination Service, had accepted the challenge of managing the implementation of SSA's plan to reengineer the disability process. In that role, he will be responsible for the overall leadership and coordination of the redesign implementation. He will establish timelines and priorities and will provide direction to component efforts as well as to task management teams. As Implementation Manager, Chuck will report directly to me and the Principal Deputy Commissioner.

During the discussions of the Team's proposal, I heard several consistent underlying themes about how our new design should be implemented: we must unify the process; we need enabling information technology; we need to ensure the safety of employees; we must continuously deliver effective training; we must retain the existing Federal/State relationship; and we must develop a simpler methodology for making disability decisions. I am absolutely committed to turning these needs into realities as we move ahead. Some will not be easy, and all will take time and money; however, all will need to be addressed if we are to achieve the successful outcome of the redesign.

As implementation plans are developed and task teams are brought together, we will continue to assess all related activities against the five primary objectives of our redesigned process:

—making the process "user friendly" for claimants and those who assist them;
—making the right decision the first time;
—making the decision as quickly as possible;
—making the process efficient; and
—making the work satisfying for employees.

However, this work will not be done in isolation— internally, we will continue to seek advice on these issues from our Advisory Group, comprised of SSA and DDS executives and union and association leaders. Externally, we will continue to publicly inform all who are interested and create opportunities for dialogue and consultation.

Special thanks are extended to the Disability Process Reengineering Team whose recommendations are the result of an unprecedented endeavor for this Agency, and I dare say for most Federal agencies. The Team's thousands of hours of interviews, research, analysis, computer modeling, feedback sessions, and revisions have created a daring image for us of what can be if we truly seek to provide world-class service. We must accept their challenge and begin the arduous task of bringing to reality what is now only a concept.

The next few years will be challenging for all of us as we build our redesigned process, but that will not be a new experience for those of you who are employees of SSA and the State DDSs. You have been called upon in the past to rise to the occasion and have always more than met the challenge; your flexibility, resourcefulness, professionalism, and just plain hard work are legendary. Now more than ever, I will need you to be bold and help build a better future for those who seek our services.

Shirley S. Chater,
Commissioner of Social Security.

Case for Action

Overview

SSA and the State Disability Determination Services (DDSs) have always striven to provide high-quality, responsive service to the public. In recent years, the disability insurance (DI) and Supplemental Security Income (SSI) claims workload has been the Agency's most challenging problem. SSA has been faced with unprecedented workload increases in both the DI and SSI programs which have severely strained its resources. Despite improvements in productivity by employees in field offices, DDSs, hearing offices, the Appeals Council and the processing centers over the last several years, SSA has had difficulty providing a satisfactory level of service to claimants for disability benefits. SSA recognizes that, in an era of spending limitations and competing social spending priorities, placing more and more resources into the current process is not a viable alternative.

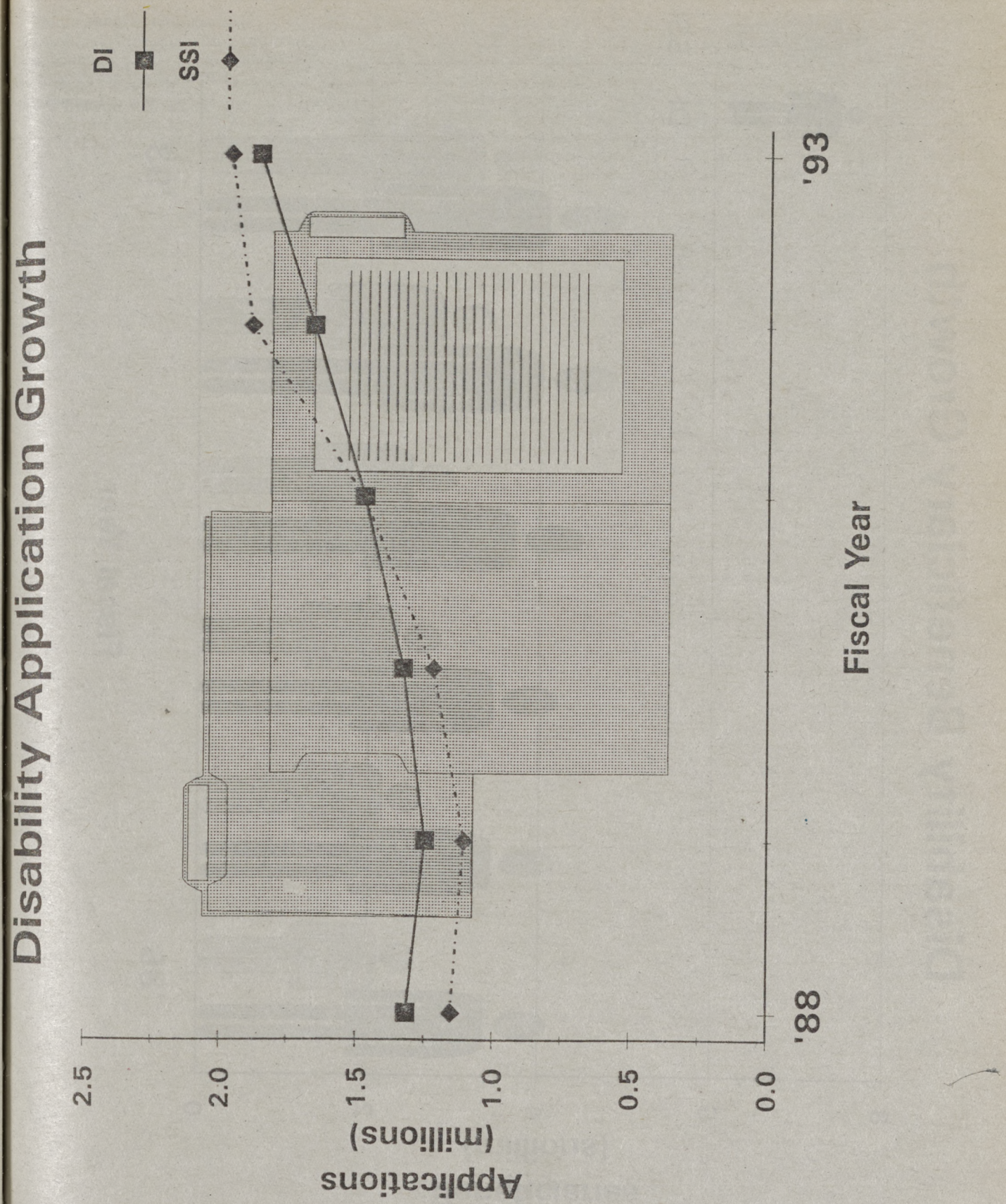
Additionally, demographic changes in the general population and in the SSA claimant population present challenges as well as opportunities as SSA strives to provide world-class service to its customers. Despite the workload and demographic changes, however, the

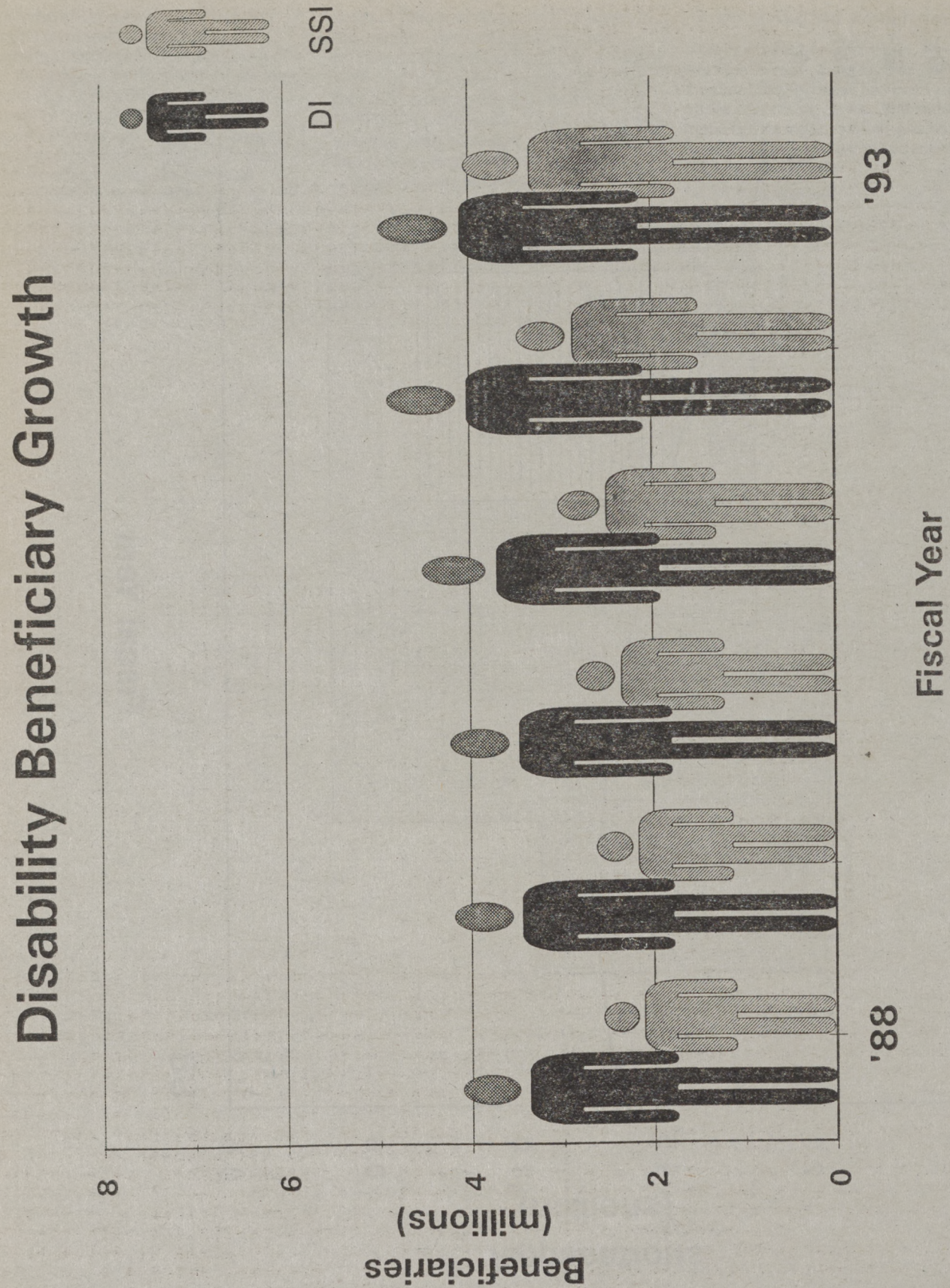
procedures for processing disability claims have not changed in any important way since the beginning of the DI program in the 1950's and many of the Agency's current practices are based, in large part, on procedures begun 40 years ago. Disability process changes that have evolved over time tend to reflect small, incremental improvements designed to address various pieces of the overall process. It has become increasingly clear that incremental improvements are no longer sufficient to achieve the level of service that will make a substantial difference to disability claimants. Thus, SSA needs a longer-term strategy for addressing service delivery problems in the disability claim process.

Workload and Operations Trends

Over the last several years, as workloads have increased dramatically, the disability process has been placed under increasing stress. The upward trend in the number of claims and the number of beneficiaries awarded is reflected as follows:

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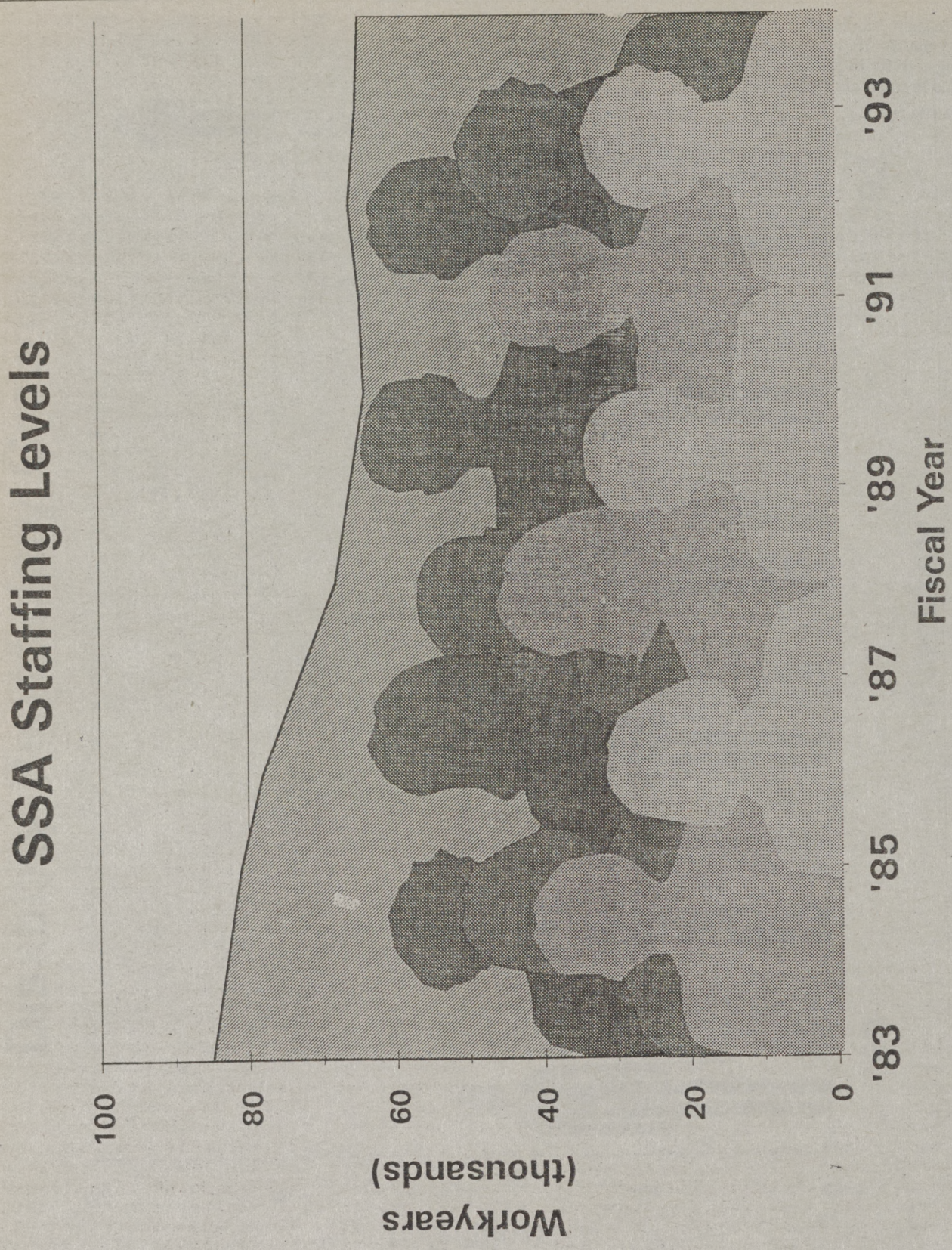

Disability Application Growth
DI
SSI
Applications (millions)
2.5
2.0
1.5
1.0
0.5
0.0
'88
'93
Fiscal Year

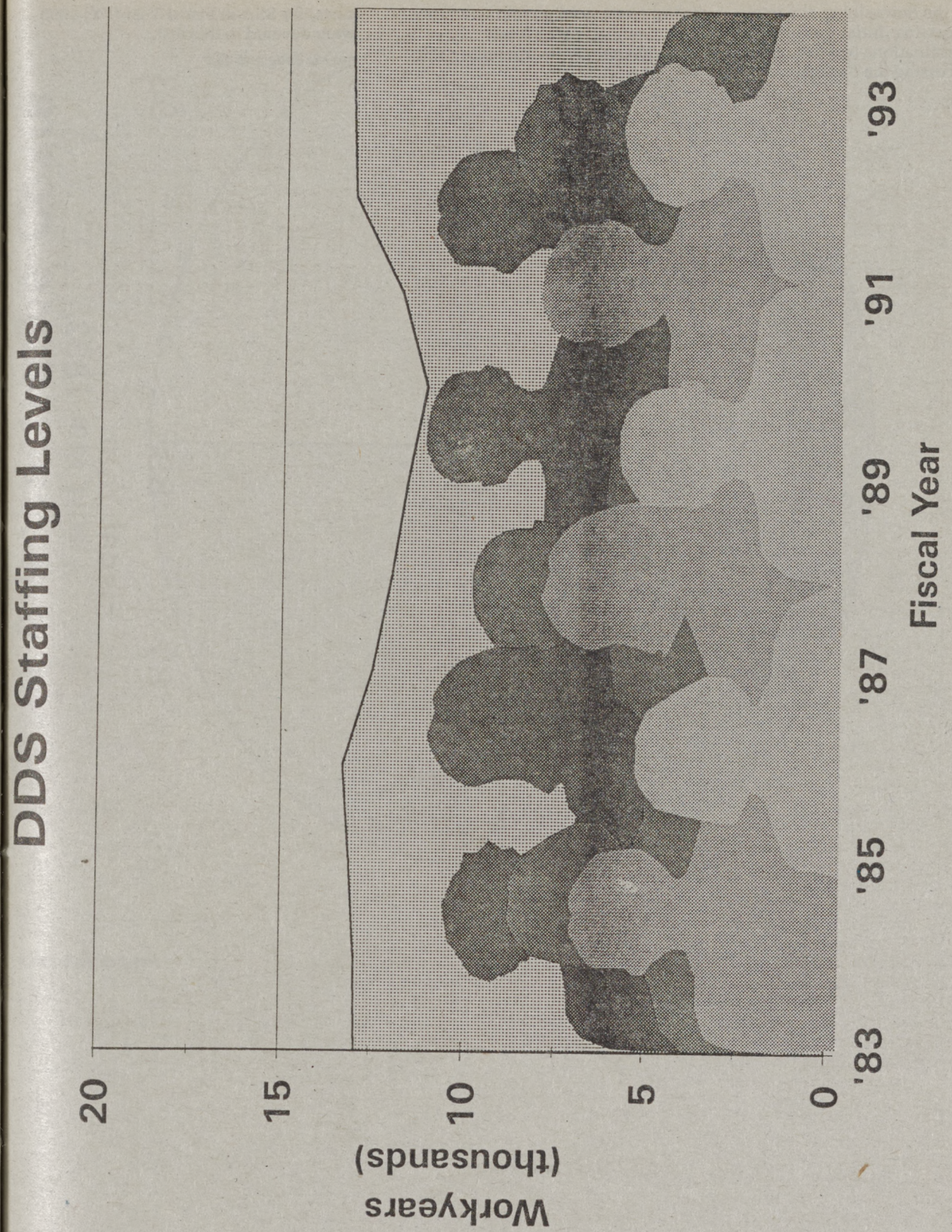


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The increase in workload has occurred concurrently with significant downsizing activity in SSA and staffing fluctuations in the State DDSs

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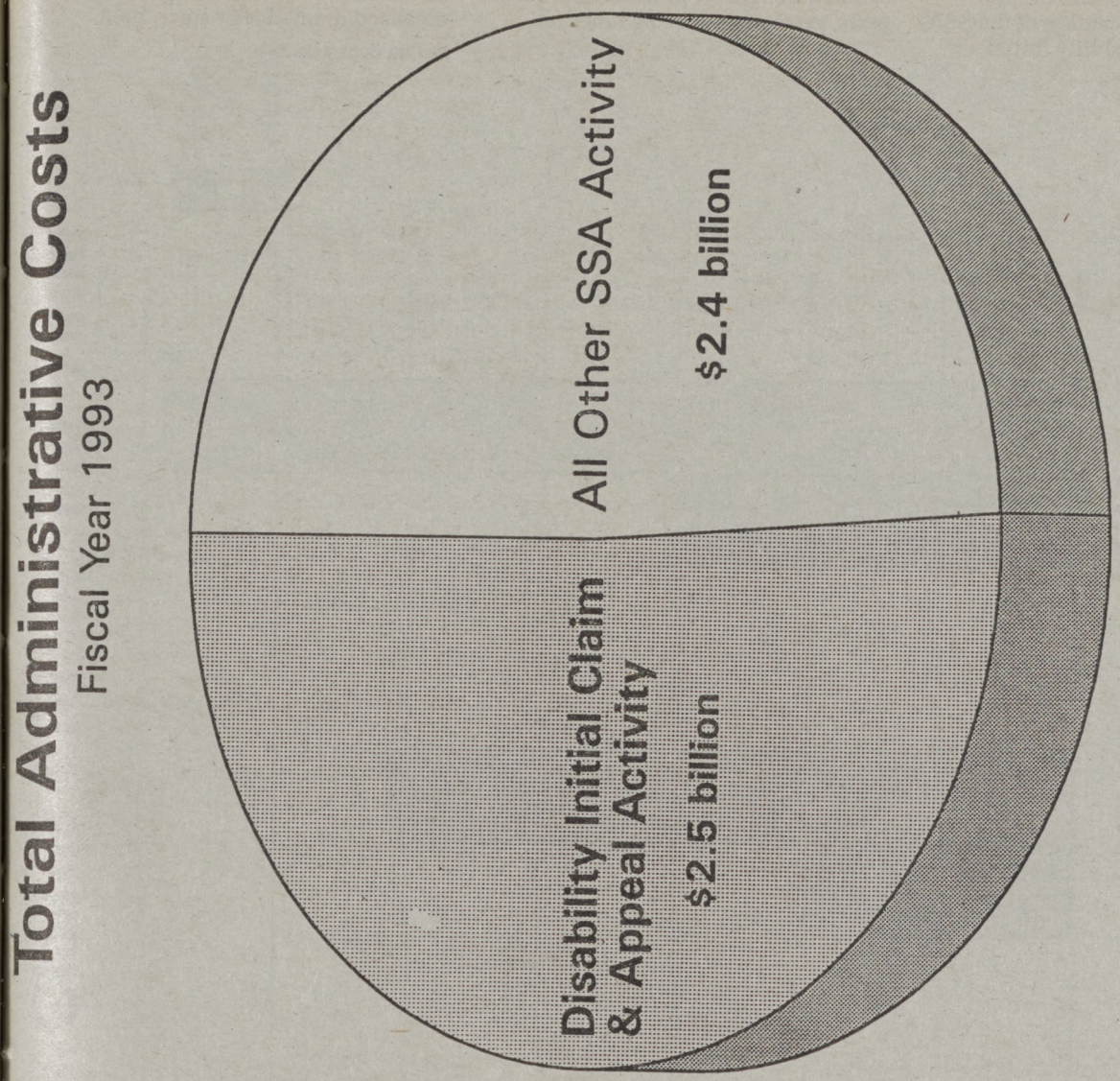

SSA Staffing Levels
Workyears
(thousands)
100
80
60
40
20
0
'83
'85
'87
'89
'91
'93
Fiscal Year



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Even with the downsizing, the total costs for processing initial disability and appeals determinations (excluding the costs for processing the *Sullivan* v. *Zebley* court case) remain enormous—more than half of the total administrative costs (including DDS costs) for SSA in Fiscal Year (FY) 1993 were devoted to this task.

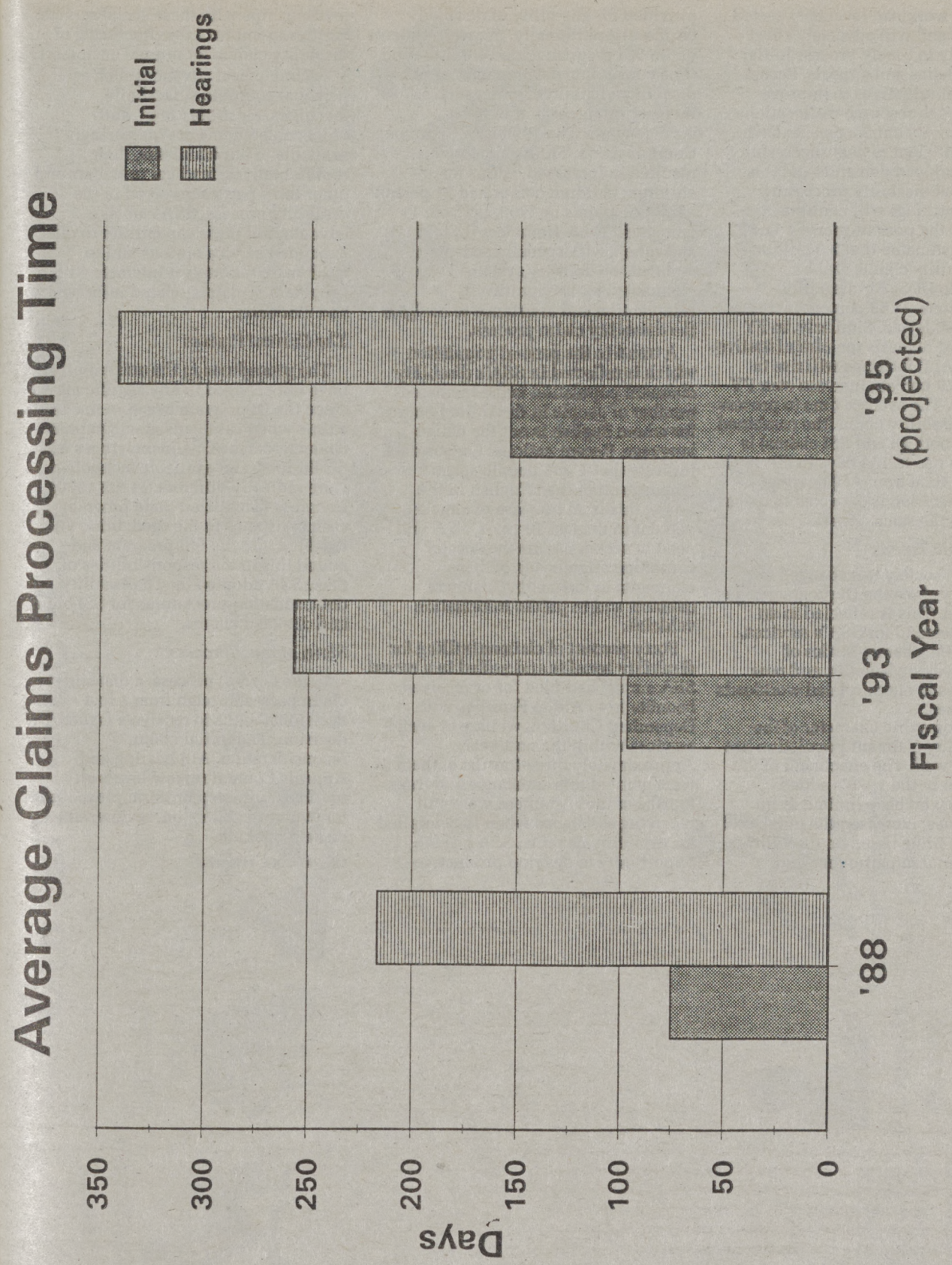
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Despite these funds, and despite directing a larger percentage of the SSA resources toward disability initial claims and appeals processing in recent years, average processing times for initial claims, as well as appeals, have escalated dramatically since 1988.

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The high workload level is expected to continue and will adversely affect SSA's ability to timely process initial disability claims and appeals. Recent management initiatives to improve service through resource reallocations and productivity enhancements have not been sufficient to deal successfully with the workload demands and it is expected that disability processing times and backlogs will continue to grow under the present process. In FY 1995, it is estimated that 2.9 million initial disability claims will be forwarded to DDSs for disability determinations—a 69 percent increase over FY 1990 levels. Similarly, in FY 1995, annual requests for administrative law judge (ALJ) hearings will rise to 542,000, a 75 percent increase over FY 1990 levels. The average time to process an initial disability claim (the combined average for both DI and SSI claims) is expected to rise to 154 days in FY 1995; the average time from ALJ hearing request to decision is expected to rise to 342 days in the same period.

Demographic Trends

American society has changed dramatically since the DI program began in the 1950s. This is reflected in an increased demand for SSA's services, changes in the characteristics of claimants seeking benefits, and new complexities in claim-related workloads and processes.

The demographic character of the SSA disability claimant population has changed as well. The enactment of the SSI program in the 1970's added individuals who have limited or no work histories, increased the number of individuals filing based on disabilities such as mental impairments, and provided for eligibility of disabled children. Additionally, the requirements of the SSI program added complex and time consuming development of non-disability eligibility factors such as income, resources and living arrangements. The 1990 U.S. Supreme Court decision, *Sullivan* v. *Zebley*, resulted in increased claims for children; children comprised 21 percent of all SSI claims in 1992, up from 11 percent in 1988. Homeless individuals and others with special needs have strained the delivery system. These claimants require significant intervention and assistance to navigate the disability claim process.

A trend in the general population which is reflected in SSA's disability claimant population is the increased number of people in the United States for whom English is not the native language. Recent national Census data indicate that 1 in 7 people speak a language other than English in the home; this is an increase of almost 38 percent in the last 10 years. SSA will need to accommodate the special communication needs of these claimants in its ongoing claimant contacts and in public information vehicles.

Forty percent of claimants filing for disability benefits and polled in a recent SSA survey had filed for or received benefits from Aid to Families with Dependent Children, welfare or social services within the past year. Approximately three-fourths of them were granted this assistance and three-fourths of those grantees were still receiving assistance when they applied for disability benefits. SSA has the opportunity to develop productive relationships with these social service entities to improve the processing of disability claims for mutual customers.

Technological advances such as personal computers, facsimile machines, electronic mail, and videoconferencing are increasingly available to our claimants, their representatives, medical providers and other third parties involved in the disability process. SSA can take advantage of these capabilities to offer expanded service options and to modernize the ways it interacts with providers of claims-related information and evidence.

The Current Process

The procedures in the current process have not changed in any significant way since the DI program began in the 1950s, a time when caseloads, demographic characteristics of claimants, types of disabilities, and available technology were radically different. In the 1970s, Congress federalized State programs of cash assistance to the aged, blind and disabled into the SSI program and added this to the responsibilities of SSA. SSA adopted the DI disability determination procedures for SSI blind and disabled claims.

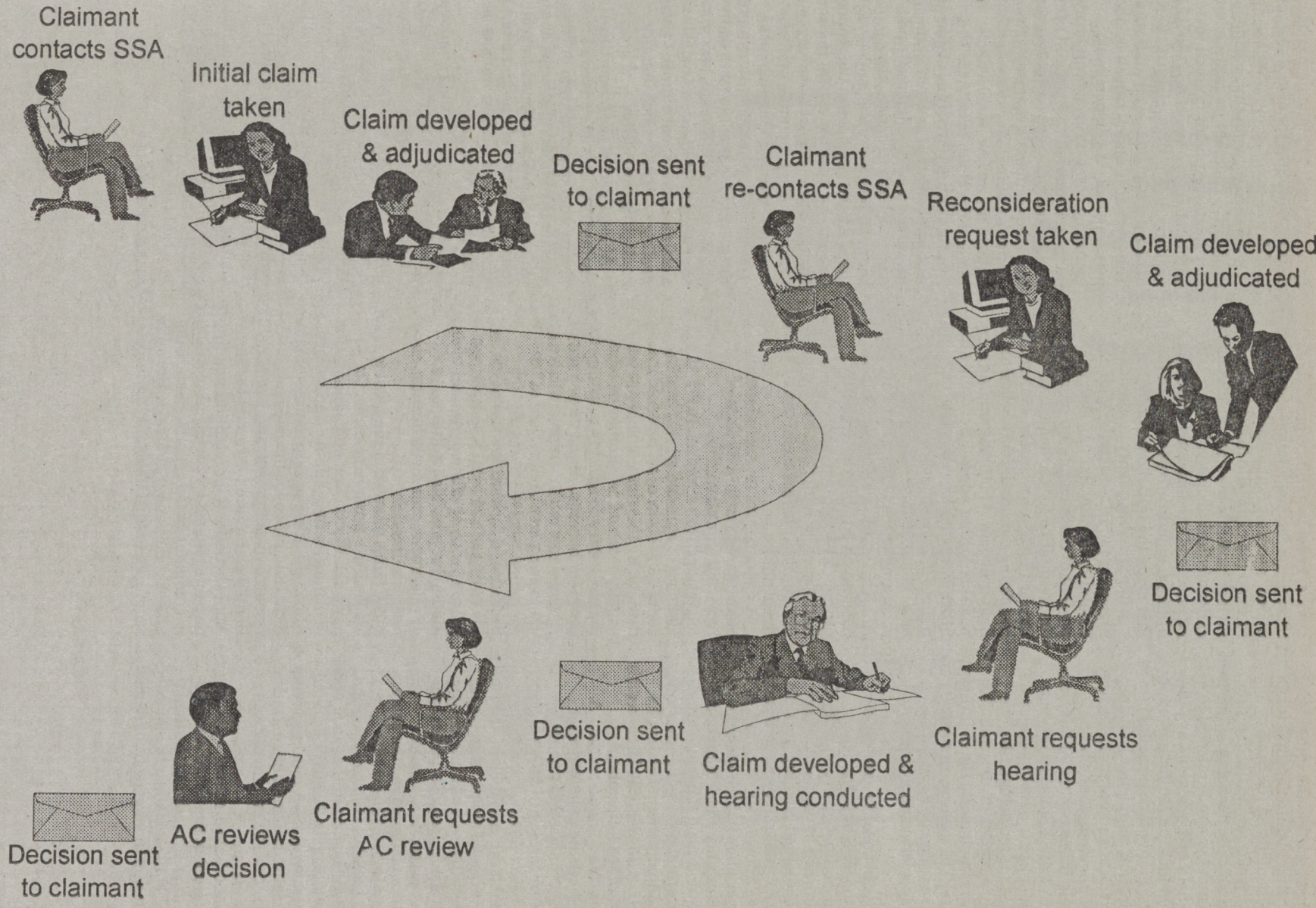
Slow, Manual Process

In the current process, a disability claim passes through from 1 to 4 decisional paths to receive a favorable decision. The initial claim, reconsideration, ALJ hearing and Appeals Council review levels all involve multi-step uniform procedures for evidence collection, review, and decisionmaking.

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Current 4-Level Process



The process starts at the initial level when an individual first applies for DI and/or SSI benefits on the basis of a disabling physical or mental condition. An individual calls the national toll-free telephone number and is referred to a local SSA field office or visits or calls one of 1,300 local field offices to apply for benefits. Field office personnel assist with application completion, obtain detailed medical and vocational history and screen nonmedical eligibility factors. Field office personnel forward the claim to 1 of 54 State DDSs where medical evidence is developed and a final decision is made regarding the existence of a medically determinable impairment which meets the definition of disability. The decision is made by an adjudicative team consisting of a disability specialist and a program physician.

After possible quality assurance review in the DDS or in the SSA regional Disability Quality Branch, the claim is returned to the field office; denials are retained pending possible appeal. In FY 1993, 39 percent of initial claims were allowed and sent to 1 of 7 processing centers (which include the Office of Disability and International Operations and the 6 Program Service Centers) for final processing and storage, as well as adjudication of claims for dependents. Allowed SSI claims remain in the field office for payment effectuation and folder retention. A sample of these are reviewed after payment for nondisability quality assurance. According to SSA's computer-based processing time measurements, an initial claim currently takes an average of about 100 days to process from the time of filing until a decision is made. However, from the claimant's perspective, a better understanding of how long the process takes comes from a 1993 study conducted by SSAs Office of Workforce Analysis, which showed that an average claimant waits up to 155 days from the initial contact with SSA until receiving an initial claim decision notice. During this period, 16 to 26 employees will handle the claim.

The claimant may request reconsideration of the initial decision within 60 days of receiving the denial notice. In FY 1993, claimants requested reconsideration in 48 percent of denied claims. Local field office personnel receive the reconsideration request, update necessary information, and forward the claim file to the DDS for review, possible medical development, and a medical decision. The reconsideration decision is made by a different adjudicative team than the one that made the initial determination.

After possible quality assurance review in the DDS or in the regional Disability Quality Branch, about 14 percent of these claims are returned to the field office for payment and forwarding to a processing center; the remaining denials are forwarded to the field office for retention, pending possible further appeal. According to SSAs computer-based processing time reports, the average reconsideration takes about 50 days—however, according to the Office of Workforce Analysis study, a claimant has now been involved with the disability process for roughly 8 months from the initial contact with SSA, and up to 36 different employees could have handled the claim.

A claimant can request a hearing before an ALJ within 60 days of receiving an unfavorable reconsideration decision. In FY 1993, claimants requested an ALJ hearing in about 75 percent of all reconsideration denials. By this time, a claimant has usually retained an attorney or other representative to assist in pursuing the claim for benefits. About 75 percent of all claimants retain a representative at the hearing level. Local field office personnel receive the request for hearing and forward it with the claim file to one of 132 local SSA hearings offices. Hearing office personnel review the file for possible additional development, conduct a hearing, and render a decision.

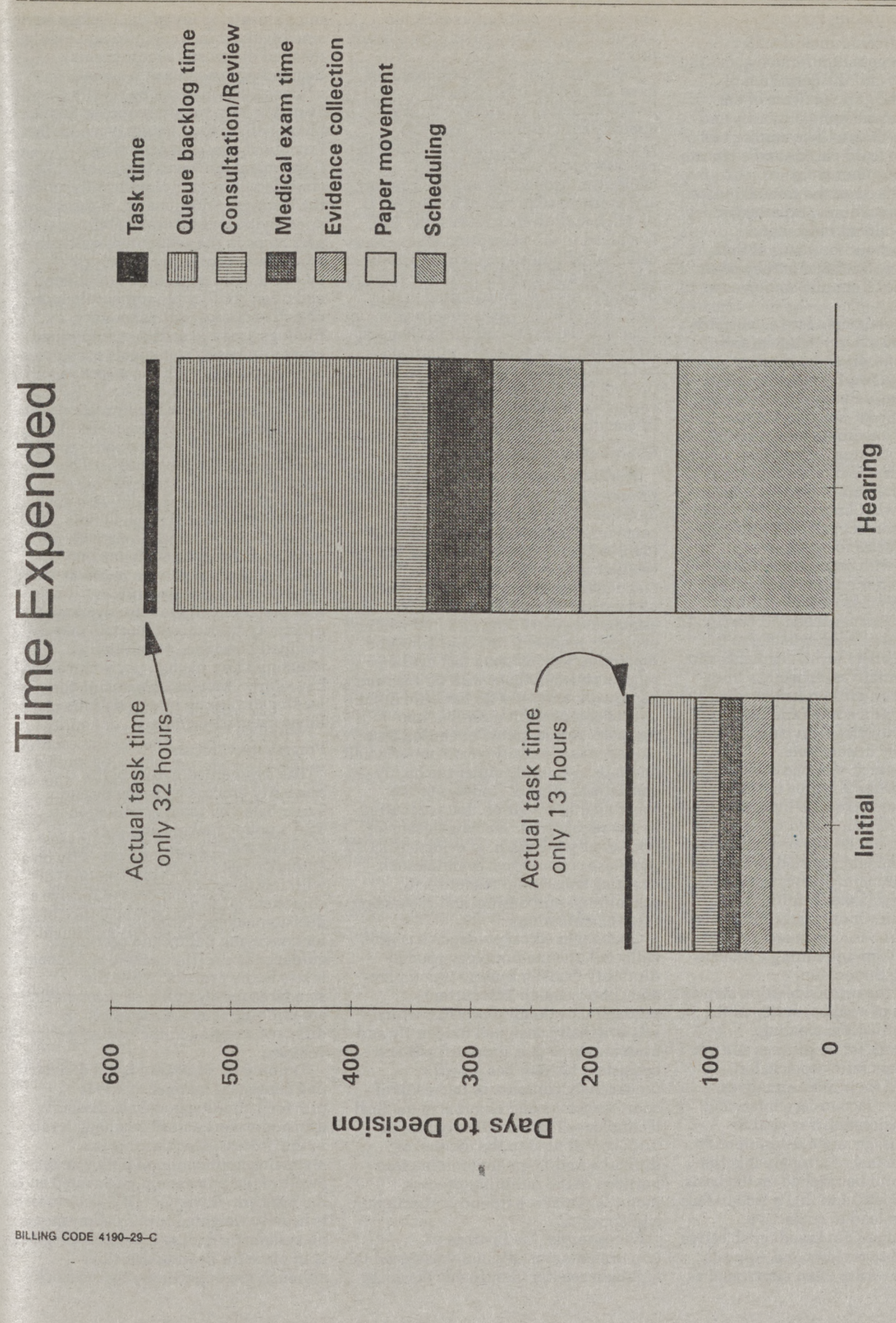
DI claims allowed at the hearing level are sent to a processing center for payment effectuation and adjudication of claims for dependents, and storage. Allowed SSI claims are returned to the local field office for income and resource development, and payment. Denied claims are forwarded to the Appeals Council for retention pending a possible request for review. According to computer-based reports, the hearing process takes about 265 days. However, according to the Office of Workforce Analysis study, a claimant has been dealing with SSA for over a year and a half at this point in the process.

If dissatisfied with the hearing decision, a claimant (or representative) may request Appeals Council review within 60 days of receiving the ALJ decision. In FY 1993, about 23 percent of hearing decisions were unfavorable. The Appeals Council considers about 18 percent of all ALJ dispositions, including cases it reviews on its own motion. Requests for Appeals Council review are typically received directly from the claimant's representative. The Appeals Council may deny or dismiss a request for review, issue a decision, or remand the claim to an ALJ. The Appeals Council remands claims to the ALJ level about 27 percent of the time for subsequent development and decision. Denied claims, representing about 70 percent of the Appeals Council dispositions, are held in the Appeals Council for possible appeal to Federal District court. Allowed claims are sent to a processing center or field office for further action as in hearing cases. According to processing time reports, this part of the process takes on average about 100 days; however, according to the Office of Workforce Analysis study, a claimant has spent almost 2 years dealing with SSA since initially contacting the Agency.

At least part of the processing time results from the time added as the claim moves from one employee or facility to another (handoffs), and waits at each employee's workstation to be handled (queues). As workloads increase, the amount of time a claim waits at each processing point grows.

"Task time" is the time employees actually devote to working directly on a claim, rather than the total amount of time it takes for a claimant to receive a final decision. Based on the Office of Workforce Analysis study, a claimant can wait as long as 155 days from the first contact with SSA until receiving an initial claim decision notice—of which only 13 hours of this is actual task time. The same study reveals a claimant can wait as long as 550 days from that initial contact through receipt of the hearing decision notice—of which only 32 hours is actual task time.

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Complex, Confusing Process

Many applicants enter the SSA disability process uninformed about the process itself and the definition of disability. They are unaware of the criteria for establishing disability and the evidence they will be required to submit. Even third parties and advocate organizations, often more knowledgeable than the general public about SSA procedures, experience difficulty obtaining meaningful information about the status of their clients claims, finding that they often are transferred from one employee to another.

Disability claimants face a "one size fits all" approach to the intake and processing of their claim, finding themselves answering questions they believe are intrusive and irrelevant to their claim. Front-line employees currently devote hours to completing forms and obtaining information which may not be necessary for a finding of disability. Claimants often do not understand what happens to the claim after initial contact with SSA and view multiple requests for medical information with annoyance. Often claimants do not understand how the decision was made and, therefore, believe that it was reached arbitrarily. If the claim is approved, whether at the initial or appellate level, claimants and their representatives, as well as front-line employees, are concerned about the complicated procedures and length of time it takes to effectuate payment and entitle eligible dependents.

SSA employees, claimants, and other interested parties all agree that the current process takes too long to provide applicants a decision, and leaves them confused about who has responsibility for their claim, and puzzled about the status of their claim during various points in the process. Additionally, nearly all believe that many claimants can and should assume more responsibility for submitting evidence and pursuing their claim.

Most view the reconsideration step as little more than a rubber stamp of the initial determination, creating additional work for employees and yet another bureaucratic obstacle for claimants and their representatives. Some believe a face-to-face interview with the decisionmaker is vital to reaching a fair, accurate determination; others believe just as strongly that the decision should be reached on the basis of a paper review, and that a face-to-face interview can lead to subjective decisions that are not based on objective criteria. Quality reviews and Appeals Council reviews are often mentioned as areas where opportunities exist for streamlining and improving the current process.

Claimants and their representatives have learned their chances for a favorable decision improve if they appeal their claim to an ALJ. The public, in particular, believes that it is necessary to hire an attorney to maneuver through the appeals process, and voices resentment at having to do so. Higher allowance rates at the ALJ level lead to the perception that different adjudicative standards apply at the initial and appeals levels. A variety of factors may be contributing to this. The facts of many cases change over time as a claimants condition changes. ALJs often have access to information not considered at lower levels in the process because earlier decisionmakers are not as likely to have face-to-face interaction with the claimant.

Contributors to Complexity

The collection of medical evidence presents problems as the case is developed, accounting for a considerable portion of the total time involved in disability claim processing. Health care providers who are a claimants treating source often do not understand the requirements for establishing disability, and find medical evidence request forms confusing and repetitive. They believe that evidence requests burden them with far too much paperwork and offer far too little in the way of compensation for the time invested. Adjudicators often find that evidence is primarily treatment-oriented and fails to provide either the highly specialized clinical findings or the functional information that is required by the regulations. To compensate for poor or missing medical evidence, DDSs purchase consultative examinations, devoting substantial resources to scheduling, purchasing, and processing these examinations.

Once the medical evidence has been collected, the methodology used by disability decisionmakers is complex and controversial. The current sequential evaluation process, which was originally designed to identify and evaluate cases in a simple, rapid and consistent fashion has grown increasingly complex as the result of court decisions and changes in medical technology. This complexity has, in turn, contributed to the increasing difficulty and fragmentation in other portions of the disability process, including intake, evidence collection, and appeals.

For example, the Listings of Impairments was originally designed to highlight readily identifiable disabling impairments. Many of the Listings have since evolved into complex and highly detailed diagnostic requirements, demanding specialized medical evidence that may not be readily available from treating sources. Some, but not all, of the Listings consider the functional consequences of an impairment; however functional considerations vary significantly among the Listings. Additionally, in assessing an individuals functional abilities at the later steps in the sequential evaluation, adjudicators collect and analyze evidence from a multitude of different, and often conflicting, sources including: objective clinical and laboratory findings; treating source opinions and other third-party statements considered to be consistent with the objective evidence; and the individuals description of his or her limitations. The development of extensive medical evidence in every case impedes timely and efficient decisionmaking. The varying approaches to assessing a claimants functional ability that are required at different steps in the sequential evaluation, along with the nature and types of evidence that adjudicators may rely on to assess function often lead to different interpretations of the same evidence by different adjudicators. Vocational rules originally designed to provide a structured approach to decisionmaking have grown increasingly complex, leading to varying interpretations and inconsistent decisions.

Fragmented Process

The fragmented nature of the disability process is driven by and exacerbated by the fragmentation in SSA's policy making and policy issuance mechanisms. Policy making authority rests in several organizations with few effective tools for ensuring consistent guidance to all disability decisionmakers. Different vehicles exist for conveying policy and procedural guidance to decisionmakers at different levels in the process. While the standards for disability decisionmaking are uniform, they are expressed in different wording in the various policy vehicles.

Training on disability is not delivered in a consistent manner, nor is it provided simultaneously to disability decisionmakers across or among levels in the process. Mechanisms for reviewing application of policy among levels of the process are fragmented and inconsistent. Review of DDS decisions is heavily weighted toward allowances; no systematic quality assurance program is in place for hearing decisions although the opportunity for feedback

from the Appeals Council or from the courts is heavily weighted toward denials.

The organizational fragmentation of the disability process creates the perception that no one is in charge of it. SSA measures the process from the perspective of the component organizations involved, rather than the perspective of the claimant. Multiple organizations (field offices, DDSs, hearings offices, Appeals Council operations, and processing centers) have jurisdiction over the claim at various points in time, with each line of authority managing toward its own goals without responsibility to the overall outcome of the process. Additionally, the impact of one components work product on other components is not measured, further contributing to the fragmentation of the process. Each component's narrow responsibilities reinforce a lack of understanding among component employees of the roles and responsibilities of other employees in different components.

The Need for a Redesigned Disability Claim Process

Concerns about the Agency's business processes generally, and the quality of service in the disability claim process in particular, led SSA leadership to the conclusion that a disability process reengineering effort was critical to the SSA goal of providing world-class service to its customers. The National Performance Review, headed by the Vice President, directed improvement of the SSA disability process as a key service initiative for the Federal government.

Leading private sector organizations have used process reengineering to identify and quickly put in place dramatic improvements in their operations. The objective of a reengineering review is to fundamentally rethink and radically redesign a business process from start to finish, so that it becomes many times more efficient and, as a result, significantly improves service to the organization's customers. By focusing on the disability claim process as a single business process, SSA hoped to cut across the organizational lines and multiple components that handle the many pieces of the disability process.

Redesign Technique

A project team composed of 18 Federal and State employees, under the direction of an SSA senior executive, assembled at SSA Headquarters in October 1993 to conduct the disability claim process reengineering review. With the guidance of an Executive Steering Committee the Team was challenged to fundamentally rethink the way SSA processes disability claims. The Team's initial findings and proposal, issued in March 1994, for a redesigned disability claim process were widely shared during a 60-day public comment period. Based on the comments received, the Team presented a revised proposal to the Commissioner of Social Security on June 30, 1994. After extensive consultation with individuals and organizations in the internal and external disability community, the Commissioner accepted the Team's recommendations for a redesigned disability process. A summary of the methodology used to redesign the disability claim process is included in Appendix I.

New Process Goals and Expectations

The Commissioner established five primary objectives against which SSA will measure the success of a redesigned disability claim process:

—The process is user friendly for claimants and those who assist them;
—The right decision is made the first time;
—Decisions are made and effectuated quickly;
—The process is efficient; and
—Employees find the work satisfying.

By focusing on these objectives, the redesigned process replaces an existing process that is slow, labor-intensive, and paper reliant with a seamless claim process that makes better use of technology, eliminates fragmentation and duplication, promotes more flexible use of resources, and results in dramatic improvements in public service. With the redesigned process, SSA has embarked on an era of change that will revitalize and streamline the way it delivers disability claim services to the public to achieve greater quality, accuracy, speed and efficiency. A detailed description of the redesigned disability claim process is presented in the following section.

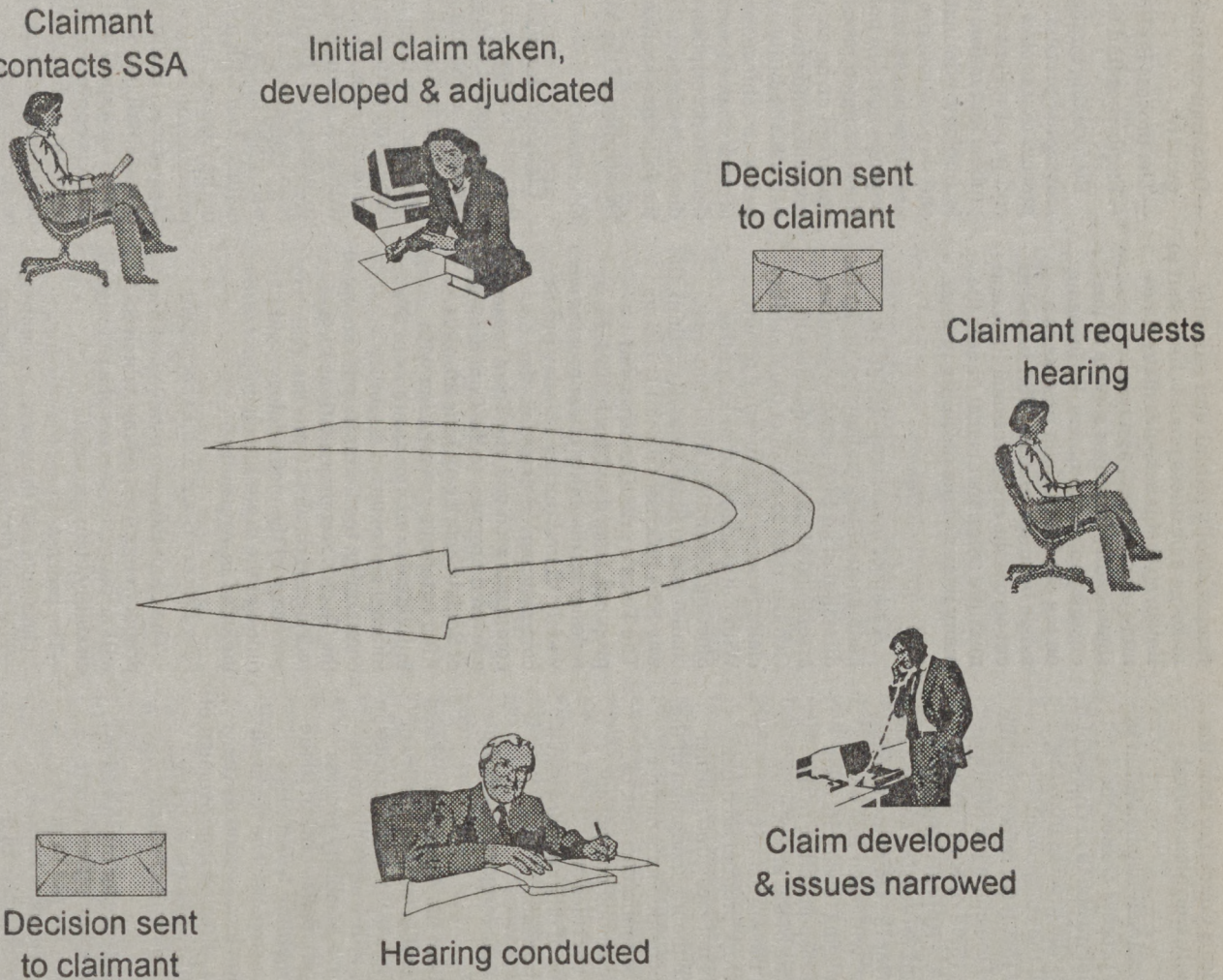
Description of the New Process

Overview

Claimants for disability benefits under the new process will be provided a full explanation of SSA's programs and processes at the initial contact with SSA. Claimants will be offered a range of options for filing a claim and conferring with decisionmakers, using various modes of technology to interact with SSA. Claimants, who are able to do so, along with third parties and representatives who act on their behalf, will assist in the development of their claims, deal with a single contact point in the Agency, and have the right to a personal interview with decisionmakers at each level of the process. The number of steps will be consolidated and the issues on appeal will be focused. If the claim is approved, the effectuation of payment to the claimant, eligible dependents and the representative will be streamlined.

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Redesigned 2-Level Process



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The new process will result in correct decisions at the earliest possible point in the process. A correct disability decision is one that appropriately considers whether an individual does or does not meet the factors of entitlement for disability as defined by SSA's statute, regulations, rulings and policies. Correct decisions in the new process depend on: a simplified decision methodology that provides a common frame of reference for deciding disability at all levels of the process; consistent direction and training to all adjudicators; enhanced and targeted collection and development of medical evidence; an automated and integrated claim processing system that will assist adjudicators in evidence gathering, analysis and decisionmaking; and a single, comprehensive quality review process across all levels. The goal of the new process is to guide all adjudicators at all levels of the process, who will be using the same standards for decisionmaking, to making correct decisions in an easier, faster, and more cost-effective manner.

A disability claim manager will handle most aspects of the disability claim at the initial level, thus eliminating many steps caused by numerous employees handling discrete parts of the claim (handoffs) and the time lost as the claim waits at each employee's workstation to be handled (queues). This will reduce the time needed to rework files and redevelop information from the same evidentiary sources. Levels of appeal will be combined and improved, reducing the need to redevelop nonmedical eligibility factors after a favorable decision because less time will have elapsed since initial filing.

The new process will enable the current work force to handle an increased number of claims, freeing the most highly specialized staff (physicians and ALJs) to work on those cases and tasks that make the best use of their talents, and targeting expenditures for medical evidence to those areas most useful in determining disability.

Employees will perform a wider range of functions, using their skills to their full potential, enabling them to meet the needs of claimants and minimize unnecessary rework. The new process will facilitate employees' ability to do the total job by providing technology and the training and support to use that technology. [*For ease of reference, references in this plan to "SSA" or "employees" include both Federal and State employees who participate in the disability process.*]

Process Entry and Intake

Customized Intake and Entry

The disability claim entry and intake processes will reflect the SSA commitment to providing world-class service to the public. The hallmarks of the process will be accessible, personal service that ensures timely and accurate decisions. SSA will work to make potential claimants better informed about the disability process and fully prepare them to participate in it. Every effort will be made to provide services to meet the needs of culturally diverse, non-English speaking claimants. SSA will also be flexible in providing modes of access to the claim process that best meet the needs of claimants and the third parties and representatives who act on their behalf. SSA will provide claimants with a single point of contact for all disability claim-related business. Finally, SSA will ensure that the disability decisionmaking process promotes timely and accurate decisions.

Making Program Information Available

SSA will make available to the general public comprehensive information packets about the DI and SSI disability programs. [*For ease of reference, references in this plan to the SSI Disability Program include the Program for those who are blind.*] The packets will include information about the purpose of the disability programs; the definition of disability; the basic requirements of the programs; a description of the adjudication process; the types of evidence needed to establish disability; and the claimant's role in pursuing a claim. The packets may be customized locally to include referral information about other programs and resources for legal representation. The goal is to target the information to likely beneficiaries and to ensure that potential claimants and other groups involved in the disability process have a better understanding of SSA disability programs, their medical and nonmedical requirements, and the nature of the decisionmaking process. This should result in reduction of general inquiries from members of the public unfamiliar with SSA disability programs and increase the number of claimants who enter the disability process knowledgeable and prepared to assume responsibility for pursuing their claims.

SSA will make disability information packets commonly available in the community, both at facilities frequented by the general public (libraries, neighborhood resource centers, post offices, the Department of Veterans Affairs offices, and other Federal government installations) and at facilities frequented by potential claimants (hospitals, clinics, other health care providers, schools, employer personnel offices, State public assistance offices, insurance companies, and advocacy groups or third-party organizations that assist individuals in pursuing disability claims). SSA studies have shown that claimants frequently rely on advice from their physicians and from State public assistance personnel in deciding whether to file a claim for disability benefits. Therefore, SSA will make a special effort to target its public information activities at these and other known sources of referrals for claims. SSA will also make the disability information packets available electronically.

In addition to comprehensive program information, the packets will describe the types of information that a claimant will need to have readily available when the individual files a claim. It will also contain two basic forms: The first, designed for completion by the claimant, will include general identifying information and will serve as the claimant's starter application for benefits; the second, designed for completion by the treating source(s), will request specific medical information about a claimant's alleged impairments. SSA will encourage claimants who are able to do so to review the information in the packet and have the basic forms completed prior to telephoning or visiting an SSA office to apply for disability benefits. Claimants will be encouraged to immediately submit starter applications to protect the filing dates for benefits. The starter application will serve as a claim for both programs, but it will include a disclaimer should the claimant want to preclude filing for benefits based on need (*i.e.*, SSI).

Claimants Will Choose Mode of Entry

The disability claim entry process will be multi-faceted, allowing claimants and third parties and representatives who assist them the maximum flexibility in deciding how they will participate in the process. Claimants may choose to enter the disability claim process by telephoning the SSA toll-free number, electronically, by mail, or by telephoning or visiting a local office. Claimants may also rely on third parties to provide them assistance in dealing with SSA. Finally, claimants may formally appoint representatives to act on their behalf in dealing with SSA. SSA field managers will also have the flexibility to tailor the various service options to their local conditions, considering the needs of client

populations, individual claimants, and the availability of third parties who are capable of contributing to the application process.

If an individual submits a starter application by mail or electronically, SSA will contact the claimant to schedule an appointment for a claim intake interview or, at the claimant's option, conduct an immediate intake interview by telephone.

If an individual telephones SSA to inquire about disability benefits, the SSA contact will explain the requirements of the disability program, including the SSA definition of disability, and provide a general explanation of evidence requirements. The SSA contact will determine whether the individual has the disability information packet, and mail it or advise the claimant regarding possible means of electronic access. If an individual indicates a desire to file a claim at that time, the SSA contact will complete the starter application available on-line as part of the automated claim processing system to protect the claimant's filing date and schedule an appointment for a claim intake interview. The interview may be in person or by telephone at the claimant's option. If the individual has no medical treating sources, the SSA contact will annotate this information within the on-line claim record.

If a claimant visits an SSA office, the SSA contact will refer the claimant for an immediate claim intake interview or, at the claimant's option, complete the starter application and schedule a future appointment for an intake interview.

In all cases, appointments for claim intake interviews will be made available within a reasonable time period, generally 3 to 5 working days, but no later than two weeks.

Local management will determine how to best accommodate claimants' needs in learning about the disability process and completing a claim intake interview. Depending on an individual's circumstances, such accommodation may involve: Referral to the nearest location for obtaining a disability information packet which can then be mailed in; an immediate telephone or in-person interview; arranging for an on-site visit from an SSA representative; or referral to appropriate third parties who can provide assistance. Additionally, depending on the nature of the individual's disability, SSA may encourage the individual to file in person when it appears that a face-to-face interview will assist in the proper claim intake and development; however, face- to-face interviews will not be required in every claim. Face-to-face interviews, when considered necessary by either the claimant or SSA, can also be accomplished via videoconferencing. In any case, SSA will make every reasonable effort to meet the needs of the claimant in completing the application process. Every effort will be made to provide services to members of the public who have limited knowledge of English.

Similarly, local managers will modify the claim entry and intake process to provide maximum flexibility for representatives who act on behalf of claimants or third parties who can assist claimants in completing the application process. Such accommodations may include, but are not limited to: (1) Using automated means to interact with SSA to protect a claimant's date of filing (e.g., telephone, fax, or E-mail); (2) providing appointment slots for third parties to accompany claimants to interviews or to provide assistance during telephone claims on a claimant's behalf; (3) out-stationing SSA personnel at a third-party location to obtain applications and/or medical evidence, when appropriate; and (4) providing "open appointment" scheduling to permit claimants to contact SSA within a flexible band of time. Interested third parties will be encouraged to participate in the development of claims.

Local managers will also conduct outreach efforts that are designed to meet the needs of hard-to-reach populations or assist those individuals unable to access the SSA claim process without considerable intervention. As appropriate, outreach efforts may be facilitated through videoconferencing, teleconferencing or other electronic methods of obtaining and processing claim information to provide timely service despite claimants' geographic or social isolation.

Disability Claim Manager

A disability claim manager will have responsibility for the complete processing of an initial disability claim. The disability claim manager will be a highly-trained individual who is well-versed in both the medical and nonmedical aspects of the disability programs and has the necessary knowledge, skills, and abilities to conduct personal interviews, develop evidentiary records, and adjudicate disability claims to payment. However, the disability claim manager will also be able to call on other SSA resources, including medical and technical support personnel, to provide advice and assistance in the claim process.

Disability claim managers will rely on an automated claim processing system that will permit them to: Gather and store claim information; develop both medical and nonmedical evidence; share necessary facts in a claim with medical consultants and specialists in nonmedical or technical issues; analyze evidence and prepare well-rationalized decisions on both medical and nonmedical issues; and produce clear and understandable notices that accurately convey all necessary information to claimants. In making decisions, disability claim managers will use a simplified decision methodology that effectively streamlines evidence collection, and will rely on standards for decisionmaking that are used at all levels of the process.

The disability claim manager will be the focal point for claimant contacts throughout the claim intake and adjudication process. The disability claim manager will explain the disability programs to the claimant, including the definition of disability and how SSA determines if a claimant meets disability requirements. The disability claim manager will also convey what the claimant will be asked to do throughout the process; what the claimant may expect from SSA during this process, including anticipated timeframes for decision; and how the claimant can interact with the disability claim manager to obtain more information or assistance. The disability claim manager will advise the claimant regarding the right to representation and provide the appropriate referral sources for representation. The disability claim manager will also advise the claimant regarding community resources, including the names of organizations that could help the claimant pursue the claim. The goal will be to give the claimant access to the decisionmaker and allow for ongoing, meaningful dialogue between the claimant and the disability claim manager.

Scope of Duties

The broad scope of the disability claim manager's duties and responsibilities, as outlined above and discussed in more detail in the following sections, presupposes a well-trained, skilled, and highly motivated workforce that has the program tools and technological support to issue quality decisions. Although disability claim managers will work exclusively within the disability programs, they will perform multiple tasks instead of singular activities, enabling them to experience the direct relationship between their actions and the final product. Varying levels of job complexity provide the opportunity for personal development, growth, and learning.

In carrying out their duties and responsibilities, disability claim managers will work in a team environment with internal medical and nonmedical experts, who provide advice and assistance for complex case adjudication, as well as technical and other clerical personnel who may handle more routine aspects of case development and payment effectuation. Where disability team members cannot be physically co-located, they can share information via the automated claim processing system and remain in communication using telephones or videoconferencing. Each disability team member will have at least a basic familiarity with all the steps in the process and an understanding of how he or she complements another's efforts; team members will be able to draw upon each other's expertise on complex issues.

In this team environment, and with the proper training, program tools (a simplified decision methodology and one set of standards for decisionmaking) and technological support, one individual should be able to handle the duties and responsibilities of the disability claim manager. An individual employee as the disability claim manager is basic to the objective of a single point of Agency contact for claimants.

However, in the near term, it may be necessary to consider whether the duties of a disability claim manager may be more appropriately carried out by more than one individual and, therefore, whether it is necessary to expand the "disability team" described above to include additional employees. Claim complexity, customer service needs, and service area location may dictate a need for flexibility in delineating the specific duties of the individuals who comprise the members of the disability team. In the near term, apprentice positions will be developed in which employees perform one or more duties of the disability claim manager while gaining experience and qualifying for greater responsibility. As the program tools and technological support, which are the underpinnings of the new process, are fully implemented, it is envisioned that team duties and positions will be modified and consolidated as necessary to fully realize the goal of an individual employee as disability claim manager.

Process Flexibility

The disability claim manager will conduct a thorough screening of the claimant's medical and nonmedical eligibility factors. If the claimant appears ineligible for either disability program based on the claimant's allegations and evidence presented or available at the time of the claim intake interview, the disability claim manager will explain this to the claimant. However, the decision regarding whether to file an application will be the claimant's alone and the disability claim manager will not discourage a claimant from filing an application. If the claimant decides not to file a claim, the disability claim manager will follow existing procedures for closing out an oral inquiry.

If the claimant decides to file, the disability claim manager will complete appropriate application screens from the automated and fully integrated (DI and SSI) claim processing and decision support system. Impairment-specific questions will assist the disability claim manager in obtaining information that is relevant and necessary to a disability decision. Based on the claimant's statements and the evidence that is available at the interview, the disability claim manager will determine the most effective way to process the claim. If the evidence is sufficient to decide the claim, the disability claim manager will take necessary action to issue a decision and, if necessary, effectuate payment. The disability claim manager will determine what additional evidence is required to adjudicate the claim and will take steps to obtain that evidence. Such steps may include asking the claimant to obtain further medical or nonmedical evidence if the claimant is able to do so, requesting medical evidence directly from treating sources, or ordering further medical evaluations. As in the current process, SSA will pay for the reasonable cost of providing existing medical evidence. If the claimant has a formal representative, the representative will have the responsibility to develop medical and nonmedical evidence.

The disability claim manager will decide whether to defer nonmedical development (e.g., requesting SSI income and resource information, or developing DI dependents' claims) or do it simultaneously with development of the medical aspects of the claim. In making this decision, the disability claim manager will take into account the type of disability alleged, evidence and other information presented by the claimant, and other relevant circumstances, e.g., terminal illness, homelessness or difficulty in recontacting the claimant. Because the disability claim manager maintains ownership of the claim throughout the initial decision-making process, the disability claim manager will be in the best position to choose the most efficient and effective manner of providing claimants with timely and accurate decisions while meeting claimants' individual service needs.

Although the disability claim manager will be responsible for the adjudication of an initial claim, the disability claim manager will call in other staff resources, as necessary. With respect to disability decisionmaking, the disability claim manager will, in appropriate circumstances, refer claims to medical consultants to obtain expert advice and opinion. SSA will develop guidelines to assist the disability claim manager in determining when expert medical advice is appropriate. Similarly, other staff resources will be called upon for technical support in terms of certain claimant contacts and status reports; development of nondisability issues including auxiliary claims or representative payee issues; and payment effectuation. However, the disability claim manager will make final decisions on both the medical and nonmedical aspects of the disability claim.

Claimant Partnership

Throughout the disability claim process, SSA will encourage claimants to be full partners in the processing of their claims. Many claimants are able to obtain the documentation necessary to develop their record, either on their own or with the assistance of a third party. Others have substantial difficulty doing so, and may have no third party to assist them. Given the range of claimant capabilities, SSA will retain ultimate responsibility for development of claims when claimants are not formally represented.

To the extent that they are able, claimants and their families and other personal support networks will actively participate in the development of evidence to substantiate their claim for disability benefits. SSA will provide assistance and/or engage third-party resources, when necessary and appropriate. SSA will keep claimants informed of the status of their claims, advise claimants regarding what additional evidence may be necessary, and inform claimants what, if anything, they can do to facilitate the process.

At the completion of the claim intake interview, the disability claim manager will issue a receipt to the claimant that will identify what to expect from SSA and the anticipated timeframes. It will also identify what further evidence or information the claimant has agreed to obtain. Finally, it will provide the name and telephone number of the disability claim manager for any questions or comments which the claimant may have, including any difficulty in

obtaining the information the claimant agreed to obtain.

Third Parties

Certain third-party organizations may be willing to provide a complete disability application package to SSA. Based on local managements assessment of service area needs and the availability of qualified organizations, SSA will recognize third-party organizations who are capable of providing a complete application package, including appropriate application forms and medical evidence necessary to adjudicate a disability claim. In such claims, SSA will permit the third party to identify potential claimants, screen for medical and nonmedical criteria, and contact SSA to protect the filing date. The third party will interview the claimant; complete all applications and related forms; obtain completed treating source statements; and obtain additional medical evaluations, when appropriate. Using procedures agreed on with local management, the third party will submit claims for adjudication by a disability claim manager. SSA will monitor such third parties to ensure that quality service is provided to claimants and to prevent fraud. SSA may establish rules, standards, and procedures for third-party interaction with claimants and SSA. Third parties may be required to undergo periodic program, procedural or software training, and may be required to meet standards for staffing and automation support. In individual cases, disability claim managers may elect to contact the claimant for the purpose of verifying identity or other claim-related issues, as appropriate. SSA will also perform ongoing document verification on a sample basis to assure the integrity of claims submitted by third parties. The automated claim processing system will facilitate effective monitoring of the claim-taking and evidence submission practices of third parties by permitting random and/or targeted selection of claim files involving specific third parties or specific types of evidence.

Personal Interview With Claimant

When the evidence does not support an allowance, the disability claim manager will issue a predecision notice advising the claimant of what evidence has been considered and providing the opportunity to submit further evidence, if any, and/or the opportunity for a personal interview within 10 calendar days. The predecision notice will further advise the claimant that if he or she does not submit evidence or request a personal interview within the 10 days, the claim will be decided based on the evidence of record. If the claimant requests a personal interview, the disability claim manager will conduct the interview in person, by videoconference, or by telephone, as the disability claim manager determines is appropriate under the circumstances. In appropriate circumstances, this predecision interview may be held concurrently with the initial intake interview. If the claimant identifies further available evidence, the disability claim manager will advise the claimant to obtain the evidence if the claimant is able to do so or, as necessary, assist the claimant in obtaining it. The claimant will be advised of the specified timeframes for submitting additional evidence.

In preparing the predecision notice, the disability claim manager will rely on existing information available on-line as part of the automated claim processing and decision support system. As part of the evidence gathering process, the disability claim manager will have previously analyzed all the medical and non-medical information gathered, and entered the pertinent data into the electronic claim record. The decision support system will use the accumulated data in the electronic record to assist the disability claim manager in producing the predecision notice.

"Statement of the Claim"

The initial disability determination will use a statement of the claim" approach. The statement of the claim will set forth the issues in the claim, the relevant facts, the evidence considered, including any evidence or information obtained as a result of the predecision notice, and the rationale in support of the determination. The statement of the claim not only reflects SSAs commitment to fully explaining the basis for its action but also recognizes that claimants need clear information about the basis for the determination to make an informed decision regarding further appeal.

As with the predecision notice, much of the information that will provide the basis for the statement of the claim will be available on-line as part of the automated claim processing and decision support system. Adjudicators will create the statement of the claim and whatever supplementary information is necessary for a legally sufficient notice to the claimant based on the information in the decision support system. For allowance decisions, the statement of the claim will be more abbreviated than for denial decisions; however, it will contain sufficient information to facilitate quality assurance reviews and/or continuing disability reviews. The statement of the claim will be part of the on-line claim record and will be available to other adjudicators as the basis and rationale for the Agencys action, if the claimant seeks further administrative review.

In making initial disability determinations, disability claim managers will rely on standards for decisionmaking that are used at all levels of the process. SSA will develop a single presentation of all substantive policies used in the determination of eligibility for benefits and all decisionmakers will be bound by these same policies. These policies will be published in accordance with the Administrative Procedure Act. Expert systems will be developed to facilitate the development and delivery of disability policy as an integrated part of the automated claim processing system.

Disability Decision Methodology

Promoting Consistent, Equitable, and Timely Decisions

SSA must have a structured approach to disability decisionmaking that takes into consideration the large number of claims (2.7 million initial disability decisions in FY 1994) and still provides a basis for consistent, equitable decisionmaking by adjudicators at each level. The approach must be simple to administer, facilitate consistent application of the rules at each level, and provide accurate results. It must also be perceived by the public as straightforward, understandable and fair. Finally, the approach must facilitate the issuance of timely decisions.

As described further below, the goal of the new decisionmaking approach is to focus decisionmaking on the functional consequences of an individual's medically determinable impairment(s). The new process will assess an individual's functional ability, assess it once in the process, do it directly rather than indirectly, and rely on standardized functional assessment instruments to do so. By focusing on function, the new approach will permit both providers of medical evidence and adjudicators at all levels of the process to use a consistent frame of reference for deciding disability, regardless of the diagnosis. It will also facilitate evidence collection by lessening the need for voluminous medical records and, instead, look at the consequences of medical findings, i.e., function. Ultimately, adjudicators will make correct decisions in an easier, faster, and more cost-effective manner.

The cornerstone of the new approach is, of course, the statutory definition of disability. Under the statute, disability (for adults) means the:

". . .inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. . .An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy. . ." (§ 223(d) of the Social Security Act).

Four-Step Evaluation Process for Adults

The new decisionmaking approach is the foundation on which SSA will base the claim intake process and evidence collection. The focus will be, first, to document the medical basis for concluding that an individual has a medically determinable physical or mental impairment. Second, once the evidence establishes a medically determinable impairment(s), decisionmakers will, in most cases, use additional medical findings to determine the link between the disease or impairment and the loss of function.

The disability decision methodology will consist of four steps that flow from the statutory definition of disability. They are:

Step 1—Is the individual engaging in substantial gainful activity?

If yes, deny.

If no, continue to Step 2.

Step 2—Does the individual have a medically determinable physical or mental impairment?

If no, deny.

If yes, continue to Step 3.*

Step 3—Does the individual have an impairment included in the Index of Disabling Impairments i.e., an impairment that clearly restricts functional ability to a degree that the individual is unable to engage in substantial gainful activity without measuring the individual's functional ability?

If yes, allow.*

If no, continue to Step 4.

Step 4—Does the individual have the functional ability to perform substantial gainful activity?

If yes, deny.

If no, allow.*

**An impairment must meet the duration requirement of the statute; a denial is appropriate for any impairment that will not be disabling for 12 months.*

Step 1—Engaging in Substantial Gainful Activity

Any individual who is engaging in substantial gainful activity will not be found disabled regardless of the severity of the individual's physical or mental impairments. Under the new approach, SSA will simplify the monetary guidelines for determining whether an individual who is an employee (except those filing for benefits based on blindness) is engaging in substantial gainful activity. In making this determination, SSA will evaluate the work activity based on the earnings level that is comparable to the upper earnings limit in the current process (i.e., $500). A single earnings level will simplify the evidentiary development necessary to evaluate work activity and establish the appropriate onset date of disability. Additionally, SSA will continue to exclude impairment-related work expenses in evaluating whether an individual's earnings constitute substantial gainful activity. SSA will continue to evaluate whether work activity is done under special conditions and/or is subsidized. Finally, SSA will continue to use separate earnings criteria to evaluate the work activity of blind individuals in the DI program as in the current process.

Step 2—Medically Determinable Impairment

Because the statute requires that disability be the result of a medically determinable physical or mental impairment, the absence of a medically determinable impairment will justify a finding that the individual is not disabled. Under the new approach, decisionmakers will consider whether an individual has a medically determinable impairment or combination of impairments, but will no longer impose a threshold "severity" requirement. Rather, the threshold inquiry will be whether the individual has a medically determinable physical or mental impairment or combination of impairments. To establish the presence of a medically determinable impairment, evidence must show an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

Decisionmakers will continue to evaluate the existence of a medically determinable impairment based on a weighing of all evidence that is collected, recognizing that neither symptoms nor opinions of treating physicians alone will support a finding that the individual has a medically determinable impairment or combination of impairments. There must be medical signs and findings established by medically acceptable clinical or laboratory diagnostic techniques which show the existence of a physical or mental impairment or combination of impairments. Depending on the nature of an individual's alleged impairment(s), SSA will consider the extent to which medical personnel other than physicians can provide evidence of a medically determinable impairment.

There will be an exception to the requirement that evidence include medically acceptable clinical and/or laboratory diagnostic techniques. This will occur when, even if SSA accepted all of the individual's allegations as true, SSA still could not establish a period of disability; under these circumstances, SSA will not require evidence to establish the existence of a medically determinable impairment. For instance, if an individual describes a condition as one that will clearly not meet the 12-month duration requirement, (e.g., a simple fracture), SSA will deny the claim on the basis that even if the allegations were medically documented, SSA could not establish a period of disability.

Step 3—Index of Disabling Impairments

If an individual has a medically determinable physical or mental impairment documented by medically acceptable clinical and laboratory techniques, and the impairment will meet the duration requirement, the decisionmaker will compare the individual's impairment(s) against an index of severely disabling impairments. The index will describe impairments so severely debilitating that, when documented, can be presumed to equal a loss of functional ability to perform substantial gainful activity without assessing the individual's functional ability. The index will be consistent with the statutory definition of disability by limiting the presumption of inability to perform substantial gainful activity, without considering age, education and previous work, to a relatively small number of claims with the most severe disabilities. Individual functional ability will be assessed in all other cases in a consistent manner at Step 4 in the process.

Because the index will permit severely disabling impairments to be identified quickly and easily, it will only consist of descriptions of specific impairments and the medical findings that are used to substantiate the existence and severity of the particular

disease entity. The medical findings in the index will be as nontechnical as possible and will exclude such things as calibration or standardization requirements for specific tests and/or detailed test results (e.g., pulmonary function studies or electrocardiogram tracings). The index will be easy to understand and simple enough so that laypersons will be able to understand what is required to demonstrate a disabling impairment in the index. Additionally, SSA will draw no conclusions about the effect of an individual's impairments on his or her ability to function merely because an individual's impairment(s) does not meet the criteria in the index. Finally, SSA will no longer need the concept of "medical equivalence" in relation to the index. Because impairments included in the index are presumed to limit functional ability so as to preclude substantial gainful activity without reference to an individual's age, education and previous work, a combination of impairments, or an impairment closely related to one that is in the index, would be found disabling when an individual's functional ability is assessed. Therefore, rules for determining equivalence for impairments in the index will not be necessary.

Step 4—Ability to Engage in Any Substantial Gainful Activity

The majority of disability claims will be evaluated using a standardized approach to measuring functional ability to perform substantial gainful activity. This standardized approach will realistically measure an individual's functional ability to do the principal dimensions of work and task performance. The approach will be known and accepted in the medical community. It will be universally used by public and private disability programs in which benefits are based on the ability to perform work-related duties. Standardizing the approach to assessing individual functional ability will facilitate consistent decisions regardless of the professional training of the decisionmakers in the disability process.

In using a standardized approach to measuring functional ability, SSA will be assessing the individual's physical and mental abilities to perform work-related activities. Individualized assessments of functional ability will also consider the effects of the individual's education. Once the individualized assessment of functional ability is made, the individual's age will determine whether his or her functional ability is compared against the demands of the individual's previous work or against a "baseline" of occupational demands. The baseline will describe a range of work-related functions that represent work that exists in significant numbers in the national economy that does not require prior skills or formal job training.

Standardized Measure of Functional Ability

SSA will develop, with the assistance of the medical and advocacy community and other outside experts from public and private disability programs, standardized instruments or protocols which can be used to measure an individual's functional ability. These standardized measures of functional ability will be linked to clinical and laboratory findings to the extent that SSA needs to document the existence of a medically determinable impairment or combination of impairments. However, extensive development of all available clinical and laboratory findings will not always be necessary in evaluating an individual's functional ability to perform basic work activities.

Functional assessment instruments will be designed to measure, as objectively as possible, an individuals abilities to perform a baseline of occupational demands that includes the principal dimensions of work and task performance, including primary physical, psychological, and cognitive processes. Examples of task performance include, but are not limited to: physical capabilities, such as sitting, standing, walking, lifting, pushing, pulling; mental capabilities, such as understanding, carrying out, and remembering simple instructions; using judgment; responding appropriately to supervisors and co-workers in usual work situations; and responding appropriately to changes in the routine work setting; and postural and environmental limitations. To the extent that current regulations already set forth guidelines for evaluating an individual's ability to perform certain of these tasks, they will be utilized in the new process.

Functional assessment instruments will be designed to realistically assess an individuals abilities to perform a baseline of occupational demands. To the extent possible, objective measures of function will be developed. However, a realistic and individualized assessment of function may require, in addition to objective measures of function, a standardized means or standardized tools for collecting information regarding an individuals perceptions of his or her functioning, the effect of symptoms, including pain, and the individuals activities of daily living. Functional assessment instruments may also require impairment-specific measures to account for the episodic nature of certain impairments or to meet a more general need for longitudinal information.

SSA will be primarily responsible for documenting functional ability using the standardized functional assessments. In the near term, SSA will solicit information on which to base a functional assessment from treating medical sources, other nonmedical sources, and from claimants in a manner that is similar to the current process. In the future, the standardized functional assessments will be widely available and accepted so that functional assessments may be performed by a variety of medical sources, including treating sources. The SSA goal will be to develop functional assessment instruments that are standardized, that accurately measure an individuals functional abilities and that are universally accepted by the public, the advocacy community, and health care professionals. Ultimately, documenting functional ability will become the routine practice of physicians and other health care professionals, such that a functional assessment with history and descriptive medical findings will become an accepted component of a standard medical report.

Disability insurance payers have incentives to participate in the research necessary to develop standardized functional assessments and some private insurers have already expressed interest in working with SSA in this effort. Standardized functional assessments will not only provide SSA with the functional information necessary to make disability decisions; functional measurements will also assist in developing provider reimbursement levels relating to rehabilitation and in assuring quality in rehabilitation programs by permitting assessment of the relationship between rehabilitative interventions and outcomes. Ultimately, the use of the same functional assessment measurements by both SSA and medical insurance payers will facilitate the cooperation and participation of the medical community in developing, refining, and implementing them.

Baseline Occupational Demands

SSA will use the results of the standardized functional assessment in conjunction with a new standard that SSA will develop to describe basic physical and mental demands of a baseline of work that represents substantial gainful activity and that

exists in significant numbers in the national economy.

To develop the new approach, SSA will conduct research and will work in conjunction with outside experts and consumers to specifically identify the activities that comprise a baseline of occupational demands needed to perform substantial gainful activity. The baseline will describe a range of work-related functions that represent work that exists in significant numbers in the national economy. In establishing the work-related functions that comprise an appropriate baseline of occupational demands, SSA will ensure that: 1) the functional activities are a realistic reflection of the demands of occupations that exist in significant numbers in the national economy; and 2) the occupations are those that can be performed in the absence of prior skills or formal job training.

The Department of Labors Advisory Panel for the Dictionary of Occupational Titles (DOT) has made recommendations for developing a new DOT by 1996 which will be a data base system that collects, produces, and maintains accurate, reliable, and valid information on all occupations in the national economy. This new system will provide comprehensive occupational data that includes, but is not limited to: physical demands of work; sensory/perceptual requirements; cognitive job demands; physical working conditions; and job characteristics such as pace or intensity of work, and the scope of interactions with others. The development of a national data base with detailed occupational information should assist SSA in conducting the initial research necessary to identify a baseline of occupational demands that represents work existing in significant numbers in the national economy. It should also provide a mechanism to ensure that the baseline of occupational demands remains current and reflects changes in the national economy over time.

Effect of Education

The statute recognizes that education may play a role in an individual's ability to perform substantial gainful activity. Experience demonstrates that educational level alone, i.e., the numerical grade level that an individual has attained, may not be a good indicator of ability to function. For example, completion of a certain educational level in the remote past, without any practical application of that education in recent work activity, has no positive effect on an individual's ability to perform substantial gainful activity. Similarly, completion of a certain grade level does not necessarily represent mastery of the subject matter.

In relying on standardized functional assessments, SSA will be measuring an individual's ability to perform the principal dimensions of work and task performance, including primary physical, psychological, and cognitive processes, and the positive effects of education will be appropriately reflected in the assessment of an individual's cognitive abilities. Thus, evaluation of a claimant's educational level will be done as an integral part of establishing the functional ability of that individual. The baseline of occupational demands will not reference prior skills or significant formal job training.

The issue of whether literacy and/or specific communication or language skills will be a factor in disability evaluation depends on the extent to which such skills are occupational demands of work existing in significant numbers in the national economy. In conducting the necessary research to identify the occupational demands of baseline work that represents work existing in significant numbers in the national economy, SSA will need to consider whether literacy or specific communication and language skills are required as occupational demands.

Effect of Age

The effect of aging on the ability to perform substantial gainful work is very difficult to measure, especially in the context of today's world when individuals are living longer than preceding generations. Despite this change, the demographic characteristics of those preceding generations continue to provide the framework for disability decisionmaking because SSA's approach for deciding disability has changed little since the inception of the DI program.

The statute recognizes that age should be considered in assessing disability on the assumption that the ability to make a vocational adjustment to work other than work an individual has previously done may become more difficult with age. In determining the impact of age, recognition should be given to the changes that occur with each succeeding generation. Accordingly, in the new process, SSA will establish an age criterion in relation to the full retirement age. The full retirement age will gradually increase over time, based on the recognition that succeeding generations can expect to remain in the workforce for longer periods than the preceding generation.

In applying age criterion under the new process, an individual who falls within the prescribed number of years preceding the full retirement age will be considered as nearing full retirement age." In establishing what the prescribed number of years should be, SSA will conduct research and consult with outside experts on the relationship between age and an individual's ability to make vocational adjustments to work other than work the individual has done in the recent past.

SSA will rely on the age of the individual in relation to the full retirement age to decide which of two decision paths to follow as described in the next two sections.

Individuals Not Nearing Full Retirement Age

For an individual who is not nearing full retirement age, SSA will compare the individual's functional abilities against the functional demands of the baseline work. The ability to perform the baseline work will represent a realistic opportunity to perform substantial gainful activity that exists in significant numbers in the national economy and a finding of disability will not be appropriate.

However, anyone who cannot perform the baseline work will be considered unable to engage in substantial gainful activity, and a finding of disability will be justified. The range of work represented by less than the baseline will be considered so narrow that despite any other favorable factors, such as young age or higher education or training, an individual would not be expected to have a realistic opportunity to perform substantial gainful work in the national economy.

For individuals who are not nearing full retirement age, the ability or inability to perform previous work is not a significant factor. These individuals should be capable of making a vocational adjustment to other work, as long as they are functionally capable of performing the baseline work.

Individuals Nearing Full Retirement Age

For individuals who are nearing full retirement age, SSA will compare the individuals functional abilities against the functional demands of the individuals previous work. Individuals nearing full retirement age can not be expected to make a vocational adjustment to work other than work they have performed in the recent past. However, consistent with the statute, if an individual, even one nearing full retirement age, is capable of performing his or her previous work, SSA will find that the individual is not disabled.

For those individuals who have no previous work, SSA will compare the individuals functional ability to the

range of work-related functions that represent work that exists in significant numbers in the national economy, i.e., baseline work, and a finding of not disabled will be appropriate if the individual is capable of performing the baseline work. In such claims, when the fact that the individual has no previous work is not related to the existence of his or her impairment(s), a finding of disability will not be appropriate if the individual retains the functional ability to perform a range of work-related functions that represent work that exists in significant numbers in the national economy. In contrast, those individuals who have significant functional limitations caused by a medically determinable impairment and lack of education would not be able to perform a range of work-related functions that represent work existing in significant numbers in the economy. Such individuals would be found disabled, as they are today.

Medical Consultant Expertise

SSA will continue to rely on medical consultants to provide expert advice and opinion regarding medical questions and issues that will arise in deciding disability claims. Disability adjudicators at all levels of the administrative review process will call on the services of medical consultants to interpret medical evidence, analyze specific medical questions, and provide expert opinions on existence, severity and functional consequences of medically determinable impairments. Additionally, on a national basis, SSA may identify specific types of issues that may require a medical opinion. If a medical consultant is called on to offer expert advice and opinion, the medical consultant will provide a written analysis of the issues and rationale in support of his or her opinion. The written analysis will be included in the record and will be considered with the other medical evidence of record by disability adjudicators at all levels of administrative review. Additionally, medical consultants will assist in the training of other consultants and disability adjudicators; contact other health care professionals to resolve medical questions on specific claims; carry out public relations and training with the medical community; and participate in the quality assurance program.

Childhood Disability Methodology

As with adults, SSA must have a structured approach to disability decisionmaking in childhood claims that takes into consideration the relatively large number of claims and still provides a basis for consistent, equitable decisionmaking by adjudicators at all levels of administrative review. The approach for childhood claims must also derive from the statute. Under the statute, "an individual will be considered to be disabled for purposes of this title if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months *(or in the case of a child under the age of 18, if he suffers from any medically determinable physical or mental impairment of comparable severity)*." § 1614(a)(3)(A) of the Social Security Act)

Of course, any decision approach for childhood claims must be consistent with the Supreme Courts interpretation of this statutory language in *Sullivan v. Zebley*, 493 U.S. 521 (1990).

Four-Step Evaluation Process for Children

The disability decision methodology for childhood claims will consist of four steps that are based on the statutory definition of disability. As with adults, the approach is one that provides accurate decisions that can be achieved efficiently and cost-effectively, primarily by ensuring that documentation requirements are directed toward the ultimate finding of disability. To the extent possible, the approach for childhood claims should mirror the adult approach. The four steps are:

Step 1—Is the child engaging in substantial gainful activity?

If yes, deny.

If no, continue to Step 2.

Step 2—Does the child have a medically determinable physical or mental impairment?

If no, deny.

If yes, continue to Step 3.*

Step 3—Does the child have an impairment that is included in the Index of Disabling Impairments?

If yes, allow.*

If no, continue to Step 4.

Step 4—Does the child have an impairment(s) of comparable severity to an impairment(s) that would prevent an adult from engaging in substantial gainful activity?

If yes, allow.*

If no, deny.

**An impairment must meet the duration requirement of the statute; a denial is appropriate for any impairment that will not be disabling for 12 months.*

Step 1—Engaging in Substantial Gainful Activity

Any child who is engaging in substantial gainful activity will not be found disabled regardless of the severity of his or her physical or mental impairments. The guidelines for determining whether a child is engaging in substantial gainful activity will be identical to the guidelines for adults. Although the issue of work activity will arise infrequently in childhood claims, the step is warranted for two reasons: 1) the approach for adults and children should be as similar as possible; and 2) as a child approaches age 18, it is increasingly likely that work activity may be an issue.

Step 2—Medically Determinable Impairment

Because the statute requires that disability be the result of a medically determinable physical or mental impairment or combination of impairments, the absence of a medically determinable impairment will justify a finding that a child is not disabled. To establish the presence of a medically determinable impairment or combination of impairments, evidence must show an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

The same guidelines and rules that apply for adults will apply equally for children. SSA will continue to evaluate the existence of a medically determinable impairment based on a weighing of all evidence that is collected, recognizing that neither symptoms nor opinions of treating physicians alone will support a finding of disability.

SSA will use the same exception for evidence collection in childhood claims that will be applied in adult claims. If a child has a medically determinable physical or mental impairment that is not an exception to further development, SSA will then evaluate whether the impairment(s) is included in the index of disabling impairments.

Step 3—Index of Disabling Impairments

If a child has a medically determinable physical or mental impairment or combination of impairments documented by medically acceptable clinical and laboratory techniques and the impairment(s) will meet the duration requirement, SSA will compare the child's impairment(s) against an index of disabling impairments.

As with adults, the index for childhood claims will function to quickly identify severely disabling impairments. The index will describe impairments so severely debilitating that the impairment is of comparable severity to an impairment that would prevent an adult from engaging in substantial gainful activity without assessing the child's functional ability. As with adults, individual functional ability in childhood claims will be assessed in a consistent manner at Step 4 in the process.

The index for childhood claims will consist of descriptions of specific impairments and the medical findings that are used to substantiate the existence and severity of the particular disease entity. The medical findings in the index will be as nontechnical as possible and will be simple enough so that laypersons will be able to understand what is required to substantiate a disabling impairment in the index. As with adults, SSA will draw no conclusions about the effect of a child's impairments on his or her ability to function merely because a child's impairment(s) is not included in the index. Additionally, SSA will no longer use the concept of "medical equivalence" or functional equivalence in relation to the childhood index.

Step 4—Comparable Severity to an Impairment(s) That Would Prevent an Adult From Engaging in Substantial Gainful Activity

Consistent with the approach for adult claims, SSA will develop, with the assistance of the medical community and educational experts, standardized instruments which can be used to measure a child's functional ability. These standardized measures of functional ability will be linked to clinical and laboratory findings to the extent that SSA needs to document the existence of a medically determinable impairment or combination of impairments. The functional assessment instruments will be designed to measure, as objectively as possible, a child's ability to function independently, appropriately, and effectively in an age-appropriate manner. Ultimately, the course of documenting and developing for functional abilities in childhood claims will, to the extent possible, mirror the adult approach. However, SSA will consider whether it is appropriate to defer the development of standardized functional assessment instruments for use in childhood claims until it gains experience in the development, refinement and use of such instruments for adults.

SSA will use the results of the standardized functional assessments to determine whether a child has impairment(s) of comparable severity to an impairment(s) that would prevent an adult from engaging in substantial gainful activity, as in the current process.

Medical Evidence Development

Timely and Accurate Decisions

SSA's ability to provide timely and accurate disability decisions depends to a significant degree on the quality of medical evidence it can obtain and the speed with which it can obtain it. The medical evidence collection process accounts for a considerable portion of the total time involved in processing disability claims.

The new process will eliminate multiple, repetitive requests for information from health care providers. Health care providers will be relieved of requests for information that burden them with far too much paperwork and will be compensated for the time invested in providing information.

Core Diagnostic and Functional Information Focus

The goals of the evidence collection process will be to focus requests for evidence on the critical diagnostic and functional assessment information necessary for a disability decision and to form a new partnership with the sources of this information so that it can be obtained in the most efficient, cost-effective manner. Medical evidence development will be driven by the four-step approach used to decide disability. Two of the core elements of that approach are: (1) identifying an individual's medically determinable impairments (including those that meet the Index of Disabling Impairments criteria); and (2) assessing the functional consequences of those impairments. The decisionmaker will develop medical evidence that is sufficient to satisfy the core elements but target evidentiary development to obtain only the evidence necessary to reach an accurate decision on the ultimate question of disability.

Treating Source Preference

SSA will give primary emphasis to obtaining medical information from treating sources that provides brief, but specific, diagnostic information regarding an individual's medically determinable impairments and the functional consequences of those impairments. Treating source statements will include diagnostic information about a claimant's impairments, the clinical and laboratory findings which provide the basis for the diagnosis, onset and duration, response to treatment, and the functional limitations that can reasonably be linked to the clinical and laboratory findings. Depending on the nature and extent of an individual's impairments and treating sources, statements from multiple medical sources may be appropriate. Once the standardized measurement criteria described earlier are widely available, a standardized functional assessment available from a treating source will be accepted as probative evidence. Treating sources or another examining source may perform the standardized functional assessment at SSA's expense.

Standardized Request Form

SSA will develop a standardized form which effectively tailors a request for evidence to the specific diagnostic and functional assessment information necessary to make a disability decision. Such information includes but is not limited to diagnostic information about a claimant's impairments, the clinical and laboratory findings which provide the basis for the diagnosis, onset and duration, response to treatment, and the functional limitations that can reasonably be linked to the clinical and laboratory findings. Treating sources will be encouraged to submit such information electronically. Standardizing requests for evidence in this manner will facilitate the participation of claimants, representatives and third parties in the evidence collection process.

The form will permit treating sources to provide necessary diagnostic and functional assessment information in summary form on a single document. In appropriate circumstances, SSA will accept a treating source's statements on the standardized form as to history and diagnosis, the clinical and laboratory findings which provide the basis for the diagnosis, onset and duration, response to treatment, and the functional limitations that can reasonably be linked to the clinical and laboratory findings, without resorting to the traditional, wholesale procurement of actual medical records. In completing standardized forms, treating sources will certify that they have in their possession the medical documentation referred to in the statement and that said documentation will be promptly submitted at the request of SSA. The certification approach does not relieve treating sources from providing objective evidence in support of their diagnoses and opinions; rather it is designed to streamline the collection of

necessary evidence. The approach is also consistent with evidence collection methods used by private disability insurance carriers, which request specific medical records in individual claims, when necessary and appropriate to the individual circumstances, or at random as part of a quality assurance program.

Treating source completion of the standardized forms will be monitored to prevent fraud. Decisionmakers will verify treating source statements by obtaining underlying medical records when appropriate. The automated claim processing system will facilitate effective monitoring of the evidence submission practices of individual treating sources by permitting random and/or targeted selection of claim files involving that treating source for quality assurance and program integrity reviews.

Treating Source Incentives

As in the current process, SSA will pay for the reasonable cost of providing existing medical evidence. SSA will acknowledge the value of treating source information by establishing a national fee reimbursement schedule for medical evidence. The fee reimbursement schedule will utilize a sliding-scale mechanism to reward the early submission of medical information; additionally, the sliding scale will be adjusted to reflect the quality of the evidence received. A national, sliding-scale fee schedule will provide incentives for treating sources to cooperate in the evidentiary development process and invest quality time to provide medical certifications on behalf of their patients.

SSA will provide resources to focus professional educational efforts and medical relations outreach at the local and/or regional level to ensure that treating sources are given up-to-date information on program requirements and made aware of specific evidentiary needs or problems as they arise in the adjudication process. SSA will conduct educational outreach on the national level on an ongoing basis with the medical community to provide a better understanding of the SSA disability programs, the medical and functional requirements for eligibility, and the best ways to provide medical information needed for decisionmaking.

Consultative Examination

If a claimant has no treating source, or a treating source is unable or unwilling to provide the necessary evidence, or there is conflict in the evidence that can not be resolved through evidence from treating sources, the decisionmaker will refer the claimant for an appropriate consultative examination. Because the standardized measurement criteria for assessing function will be widely available, consulting sources will be able to perform functional assessments that, in the absence of adequate treating source information or where there are unresolved conflicts in the evidence, will be considered probative evidence. Depending on the service area, SSA will consider contracting with large health care providers to furnish consultative examinations for a specified geographic location.

As part of an ongoing training and medical relations program, SSA will ensure that providers of consultative examinations are provided adequate training on disability requirements. Those medical providers who conduct consultative examinations for SSA will also need ongoing training regarding changes in the disability program. SSA will prepare training programs for this audience which will utilize written, audiotape, videotape, and computerized training methods.

Administrative Appeals Process

Simple, Accessible Process

To eliminate the public perception that multiple, mandatory appeal steps are obstacles to receiving timely, fair, and accurate decisions, SSA will reduce the number of mandatory appeals steps in the administrative process. Streamlining the appeals process will not only promote more timely decisions but also ensure that claimants do not inappropriately withdraw from the claim process based on a perception that it is too difficult or time-consuming to pursue their appeal rights.

Claimants will be able to fully participate in the administrative appeals process with or without a representative. SSA will ensure that claimants are fully advised of their right to representation and SSA will routinely provide the appropriate referral sources for representation. SSA will also encourage the early participation of a representative when the claimant has appointed one and will give the representative responsibility for developing evidence necessary to decide a claim. However, the decision whether to appoint a representative must remain with the claimant and SSA will neither encourage nor discourage claimants in seeking representation.

The administrative appeals process will instill public confidence in the integrity of the system. To instill such confidence, SSA will provide an initial decisionmaking process that is thorough and results in fully developed records with fair and accurate decisions. Additionally, the claimant will be given the basis of a decision in clear and understandable language. Finally, SSA will ensure that its policies have been consistently applied at all levels of administrative review.

As noted previously, the initial disability determination will use a "statement of the claim" approach which will set forth the issues in the claim, the relevant facts, the evidence considered, including any evidence or information obtained as a result of the predecision notice, and the rationale in support of the determination. The statement of the claim will be part of the on-line claim record and will stand as the basis and rationale for the Agency's action, if the claimant seeks further administrative review. SSA will standardize claim file preparation and assembly, including the use of appropriate electronic records, at all levels of administrative process until such time as the claims record is fully electronic.

First Appeal Level

Because the initial determination will be the result of a process that ensures fully developed evidentiary records and ample opportunity for the claimant to personally present additional evidence prior to an adverse determination, there will be no need for any intermediate appeal (e.g., reconsideration) prior to the ALJ hearing. If the claimant disagrees with the initial determination, the claimant may, within 60 days of receiving notice, request an ALJ hearing.

Adjudication Officer

When a claimant requests an ALJ hearing, an adjudication officer will conduct an interview in person, by telephone, or by videoconference, and become the primary point of contact for the claimant. The adjudication officer will have the same knowledge, skills and abilities as the adjudicators who decide claims initially. The adjudication officer will also have specialized knowledge regarding hearings procedures. The adjudication officer will be the focal point for all prehearing activities but will work closely with the ALJ, medical consultants and the disability claim manager, when appropriate.

The adjudication officer will provide the claimant an in-depth understanding of the hearing process, with particular focus on the right to representation. To prevent delays caused by a lack of understanding of this right, the adjudication officer will again provide the appropriate referral sources for representation; give the claimant, where

appropriate, copies of necessary claim file documents to facilitate the appointment of a representative; and encourage the claimant to decide about the need for and choice of a representative as soon as is practical. The adjudication officer will be available to answer the claimant's questions and concerns regarding the hearing process.

The adjudication officer will also identify the issues in dispute and whether there is a need for additional evidence. If the claimant has a representative, the representative will have the responsibility to develop evidence. If the claimant has a representative, the adjudication officer will also conduct informal conferences with the representative, in person or by telephone, to identify the issues in dispute and prepare written stipulations as to those issues not in dispute. If the claimant submits additional evidence, the adjudication officer may refer the claim for further medical consultation and opinion, as appropriate.

The adjudication officer will have full authority to issue a revised favorable decision if the evidence so warrants. This will ensure that allowance decisions are expedited and not delayed until a formal hearing before an ALJ. If the adjudication officer issues a favorable decision, the adjudication officer will refer the claim to a disability claim manager to effectuate payment.

The adjudication officer will consult with the ALJ during the course of prehearing activities, as necessary and appropriate to the circumstances in the claim. As a preliminary matter, the adjudication officer will also routinely schedule a date for the hearing that is a standard number of days after the hearing request. Standardizing the hearing date process will facilitate claimant understanding and reduce the possibility of non-appearance at the hearing. It will also enable representatives to plan their schedules when taking on a case. The adjudication officer may exercise discretion in establishing an earlier or later hearing date depending on the individual circumstances and the ALJ's calendar. Electronic access to ALJs' calendars, as established by individual ALJs, will facilitate timely and appropriate scheduling of hearings. The adjudication officer will refer the prepared record to an ALJ only after all evidentiary development is complete and the claimant or a representative agrees that the claim is ready to be heard.

The ALJ will retain the authority and ability to develop the record. However, use of an adjudication officer realigns most, if not all, prehearing activities so that the burden of ensuring their completion rests with other members of the adjudicative team. With completely developed claims before them, ALJs will be able to concentrate their efforts on conducting more hearings and rendering decisions faster.

Hearing Proceedings

The ALJ hearing will be a *de novo* proceeding in which the ALJ considers and weighs the evidence and reaches a new decision. A *de novo* hearing is consistent with the role of an ALJ envisioned under the Administrative Procedure Act. Under that scheme, the ALJ is an independent decisionmaker who must apply an agency's governing statute, regulations and policies, but who is not subject to advance direction and control by the agency with respect to the decisional outcome in any individual claim. ALJs are independent triers of fact who perform their evidentiary factfinding function free from agency influence. At the same time, the Administrative Procedure Act ensures that an ALJ's decision is subject to later review by the agency, thus giving the agency full authority over policy. Policy responsibility remains exclusively with the agency while the public has assurance that the facts are found by an official who is not subject to agency influence.

A hearing before an ALJ will remain an informal adjudicatory proceeding as it is under the current process. The claimant will have the right to be represented by an attorney or a non-attorney with the decision regarding representation made by the claimant alone. An informal, nonadversarial proceeding is consistent with the public's strong preference for a simple, accessible hearing process that permits, but does not require, a representative. An informal process facilitates the earlier and faster resolution of the issues in dispute, thus promoting more timely decisions.

As an independent factfinder in a nonadversarial proceeding, the ALJ will still have a role in protecting both SSA interests and the claimants interests, particularly when the claimant is unrepresented. However, an improved initial determination process with its focus on early and comprehensive evidentiary development, predecision notices and opportunity for personal interviews, fully rationalized initial decisions, and prehearing analysis of contested issues should ensure that the Agency position is fully explored and presented to the ALJ. Moreover, the primary burden of compiling an evidentiary record will be shifted to the representative—if one is appointed—or to the claimant (when able to do so), with assistance (when necessary) from SSA personnel. This will permit the ALJ, in most circumstances, to close the record at the conclusion of the oral hearing, deliberate on the issues, and render prompt decisions.

In making disability decisions, ALJs will rely on the same standards for decisionmaking that are used by the disability claim managers and adjudication officers. Adjudication officers and other decision writers will assist ALJs in preparing hearing decisions, using the same decision support system that supports the preparation of initial disability determinations. A simplified disability decisional methodology, in conjunction with the use of prehearing stipulations that frame the issues in dispute, will result in shorter, more focused hearing decisions. If the ALJ issues a favorable decision, he or she will refer the claim to a disability claim manager to effectuate payment.

Final Decision of the Secretary

Under the new process, if a claimant is dissatisfied with the ALJ's decision, the claimant's next level of appeal will be to Federal district court. A claimant's request for Appeals Council review will no longer be a prerequisite to seeking judicial review.

As under the current process, the Appeals Council will continue to have a role in ensuring that claims subject to judicial review have properly prepared records and that the Federal courts only consider claims where appellate review is warranted. Accordingly, the Appeals Council, working with Agency counsel, will evaluate all claims in which a civil action has been filed and decide, within a fixed time limit whether it wishes to defend the ALJ's decision as the final decision of the Secretary. If the Appeals Council reviews a claim on its own motion, it will seek voluntary remand from the court for the purpose of affirming, reversing or remanding the ALJ's decision. The Secretary's authority for seeking voluntary remand prior to the Secretary's filing of an answer to the civil action is currently provided for in § 205(g) of the Act. Favorable Appeals Council decisions will be returned to the disability claim manager to effectuate payment. The number of civil actions requiring substantive action by the Appeals Council will be relatively small because, in the new process, ALJ decisions will be the result of a fully developed evidentiary record where the factual and legal issues have been focused for final resolution.

Additionally, the Appeals Council will have a role in a comprehensive quality assurance system. As part of the in-line review component of this system, which is described in greater detail below, the Appeals Council will conduct its own motion reviews of ALJ decisions (both allowances and denials) and dismissals prior to effectuation. If the Appeals Council decides to review a claim on its own motion, the Appeals Council may affirm, reverse or remand the ALJ's decision, or vacate the dismissal. The Appeals Council's review will be limited to the record that was before the ALJ.

The Agency will establish appropriate mechanisms to respond to claimant allegations of ALJ misconduct or bias. To the extent that the allegations of ALJ misconduct may affect the final decision in a claim, the Agency will consider whether an appropriate mechanism includes some form of final Agency review at the claimant's request.

Quality Assurance

System of Agency Accountability

SSA will be accountable to the public, the ultimate judge of the quality of SSA service, and will strive to consistently meet or exceed the public's expectations. SSA will have a comprehensive quality assurance program that defines its quality standards, continually communicates them to employees in a clear and consistent manner, and provides employees with the means to achieve them.

The quality assurance program will have three primary components: 1) substantial resources to ensure that the right decision is made the first time; 2) comprehensive and systematic reviews of the quality of the decisionmaking process at all levels; and 3) measures of customer satisfaction against the SSA standards for service.

Investment in Employees

SSA's ability to ensure that the right decision is made the first time depends on a well-trained, skilled, and highly motivated workforce that has the program tools and technological support to issue quality decisions.

SSA will make an investment in comprehensive employee training to ensure that all employees have the necessary knowledge and skills to perform the duties of their positions. SSA will develop national training programs for initial job training and orientation as well as continuing education to maintain job knowledge and skills. Such training will include general communication skills and how to deal effectively with the public generally, and disability claimants in particular. National training programs will also address changes to program policy. Consistent program policy training will be provided to disability decisionmakers at all levels of the process.

In addition to initial program training, continuing education opportunities will be made available to employees to enhance current performance or career development. These opportunities may be in the form of self-help instruction packages, videotapes, satellite broadcasts, or non-SSA training or educational opportunities. SSA will ensure that employees are given sufficient time and opportunity to complete the required continuing education. Employee feedback on the value of these continuing education opportunities, including the quality of training materials, methods, and instructors, will be used to continually improve training programs.

In addition to formal program training, SSA will rely on a targeted system of in-line quality reviews and monitoring of adjudicative practices for all employees. The elements include a mentoring process for new employees, peer review for experienced employees and management oversight at key points in the adjudicative process. SSA will create mechanisms that facilitate peer discussions of difficult claims or issues. Quality reviewers and policy makers will participate in these types of discussions. Peer reviews and mentoring will not only promote timely and accurate development of disability claims, but will also foster a spirit of teamwork. They will also promote earlier identification and resolution of problems with policy or procedures. Managers will be expected to oversee the adjudication process. They will conduct spot checks at key points in the adjudication process or perform special reviews based on profiles of error-prone claims. The goal of these reviews is to provide immediate, constructive feedback on identified errors to reduce or eliminate their possible recurrence. Payment errors on claims detected during in-line reviews will be corrected before a claimant is notified of the decision.

As noted previously, under the Administrative Procedure Act, the ALJ is an independent decisionmaker who must apply an agency's governing statute, regulations and policies, but who is not subject to advance direction and control by the agency with respect to the decisional outcome in any individual claim. Accordingly, a system of peer review, mentoring and management oversight in advance of the ALJ's decisionmaking is inappropriate. However, the ALJ decision may be subject to final agency review. Therefore, as part of the in-line quality assurance process, ALJ decisions (both allowances and denials) and dismissals will be subject to review by the Appeals Council on its own motion prior to effectuation of the ALJ's decision or dismissal.

Several key features previously described in this plan are critical to ensuring that adjudicators have the necessary program tools to issue accurate decisions. A single presentation of all substantive policies used in determining eligibility for benefits must be in place. Additionally, an automated and integrated claim processing system will provide the necessary technological support for adjudicators at all levels of the administrative process. Expert systems will be developed to integrate disability policy into the claim processing system. Among other things, the claim processing system will facilitate claims taking, evidence development, and the preparation of accurate notices and decisions by providing on-line editing capacity to identify errors in advance and decision support software to assist in analysis and decisionmaking. The processing system will help to identify errors of both procedure and substance, and also support routine analysis to aid in avoiding future similar errors. An on-line technical review will occur each time information is added to the electronic record.

Comprehensive employee education and an in-line review system will build quality into the system of adjudication with the goal of error prevention. SSA must monitor that quality on a systematic, national basis. Accordingly, all employees (including ALJs) will be subject to and receive continuous feedback from comprehensive end-of-line reviews as described in the following section.

End-of-Line Reviews

A second necessary component of quality assurance is an integrated system of national postadjudicative monitoring to ensure the integrity of the administrative process and to promote national uniformity in the adjudication of disability claims at all levels of the process. This system of quality measurement will include comprehensive reviews of the whole adjudicatory process. At a minimum, a comprehensive end-of-line quality measurement system must: be statistically valid; review both allowances and denials in equal

proportion; review the entire disability claim process, both the medical and nonmedical aspects; and review claims decided at all levels of the adjudicatory process.

These end-of-line reviews will focus on whether correct decisions were made at the earliest possible point in the process. This type of review will not be aimed at correcting errors in individual claims but, rather, will be the means to oversee, monitor and provide feedback on the application of Agency policies at all levels of decisionmaking. However, erroneous decisions detected during end-of-line reviews will be subject to existing reopening regulations. Reliance on an integrated claim processing system will facilitate the selection of a statistically valid sample of claims at all levels of the process for this review.

An integrated claim processing system will permit the selection of other postadjudicative samples of claims as SSA deems necessary to effectively test new operational procedures or monitor specific procedures in the administrative process; oversee the implementation of new program policy regulations and initiatives; and monitor both internal and external claims development practices to prevent fraud.

SSA will use the results from these end-of-line reviews to identify areas for improvement in policies, processes or employee education and training. SSA will also use the results to profile error-prone claims with the goal of preventing errors at the front end.

Customer Satisfaction Surveys

A final component of quality assurance is measuring customer satisfaction. To measure whether SSA has met or exceeded the public's service expectations, SSA must measure the public's level of satisfaction with the level of service SSA provides. Customer surveys (including feedback cards) and periodic focus groups will be the most frequently used methods of determining the public's views on the quality of SSA service. SSA will also survey representatives and third parties who provide assistance or act on claimants' behalf in dealing with SSA. Survey results will be communicated to staff on a timely basis, both as Agency feedback and individual feedback, along with any plans to address identified problems.

SSA will also seek employee feedback on how well SSA has met their expectations. Employee feedback will be sought on a wide array of issues including Agency goals and performance indicators, training and mentoring needs, and the quality of operating instructions. Although formal mechanisms will be used to obtain feedback periodically, each employee will be encouraged to provide continuous feedback on how to make improvements in the process.

Measurements and Management Information

Service Perspective

SSA's measures of performances will be revised to assess the performance of the Agency as a whole in providing service to claimants for disability benefits. Management information regarding the contributions at each step in the process to the final product, as well as to the work product passed on to other steps will be available. For example, current component processing time measures will be replaced by a measure of time from the first point of contact with SSA until final claimant notification. Meaningful, timely management information will be facilitated by a seamless claim processing system with a common database that is used by all individuals who contribute to each step in the process.

Other measures, such as cost, productivity, pending workload, and accuracy will be developed or revised to assess the performance of the Agency as a whole and the participants in the process who contribute to this performance. Measurements for public awareness, as well as claimant and employee satisfaction, will add to this assessment.

Management information will be current and accessible from an intelligent workstation. In addition to routine, published national reports generated from the management information system, other reports needed by national or local entities, or individual employees will be preformatted and system-generated on demand. Managers and employees will have the flexibility to change parameters and to access the full data base, permitting comparisons of performance and trends analysis. The management information system will also permit customized, ad hoc reports for special studies or immediate special purpose activities with access to the full data base. Tools including user-friendly report generator software and statistical forecasting and modeling applications will be available on the intelligent workstation to assist users in the data analysis.

New Process Enablers

Reengineering is dependent on a number of key factors that provide the framework for the new process design. Each of these "enablers" is an essential element in the new disability process.

Process Unification

Under the Social Security Act, the Secretary is granted broad authority to promulgate regulations to govern the disability determination process. In addition to regulations, SSA publishes: 1) Social Security Rulings, which are precedential court decisions and policy statements or interpretations that SSA has adopted as binding policy, and 2) Acquiescence Rulings, which explain how a decision by a U.S. Court of Appeals will be applied when the court's holding is at variance with the Agency's interpretation of a provision of the statute or regulations. ALJs and the Appeals Council rely on the regulations and rulings in making disability decisions. However, guidance for decisionmakers at the initial and reconsideration levels is provided in a series of administrative publications, including: 1) the Program Operations Manual System instructions which provide the substance of the statute, regulations, and rulings in a structured format and 2) other administrative issuances which clarify or elaborate specific policy issues. The use of different source documents by adjudicators fosters the perception that different policy standards are being applied at different levels of decisionmaking in the disability claim process.

To ensure that SSA provides consistent direction to all adjudicators regarding the standards for decisionmaking, SSA will develop a single presentation of all substantive policies used in the determination of eligibility for benefits. These policies will be published in accordance with the Administrative Procedures Act and all decisionmakers will be bound by these same policies.

Public and Professional Education

Public and professional education is essential to ensure that individuals and other groups involved in the disability process have a proper understanding of SSA disability programs, their medical and nonmedical requirements, and the nature of the decisionmaking process.

SSA will make information widely available for the general population with the goal of reducing general inquiries from members of the public unfamiliar with SSA disability programs and increasing the number of claimants who enter the disability process knowledgeable and prepared to assume responsibility for pursuing their claims. Pamphlets, factsheets, posters, videos, information on diskettes and on

computer bulletin board systems will be developed and presented in a simple, straightforward and understandable manner. Information will be available in many languages and dialects and will accommodate vision and hearing impaired individuals.

SSA will work with national and local groups involved in the disability programs to develop direct lines of communications. These efforts will be aimed not only at providing information but also at creating ongoing organizational relationships to maintain a dialogue about the disability process.

SSA will also conduct educational outreach with the medical community to provide them with a better understanding of the SSA disability programs, the medical and functional requirements for eligibility, and the best ways to provide medical information needed for decisionmaking. In addition to the use of printed materials, SSA will arrange briefings and training sessions in association with medical organizations and societies at the local, State and national levels, as well as through hospital staff meetings. Those medical providers who conduct consultative examinations for SSA will need ongoing training regarding changes in the disability program. SSA will prepare training programs for this audience which will utilize written, audiotape, videotape, and computerized training methods.

SSA will conduct outreach efforts with the legal community, to ensure that information about the disability programs is widely available to the organized bar and the Federal judiciary. Policy documents, regularly updated electronically, and rules of representation will be available at forums sponsored by the organized bar and in initial orientation and continuing legal education programs designed for Federal judges.

Claimant Partnership

SSA's interaction with claimants will focus on enabling their participation in the process. SSA will also work with third parties, such as family members and community-based organizations, to provide additional claimant support.

Understandable public information materials and comprehensive information packets will be widely available. Explanations of the programs, the decisionmaking process, and claimant responsibilities will be widely available and furnished at the point individuals first make contact with SSA. Claimants, who are able to do so, will be asked to do more to facilitate development of supporting information, particularly with respect to medical evidence. To encourage the release of evidence by treating medical sources, SSA will network with the treating source community to overcome the lack of understanding and possible resistance to providing patient information. SSA will encourage private insurers and public agencies that refer claimants to SSA as a condition of receiving other benefits to provide medical evidence for these individuals.

SSA will develop ongoing relationships with community organizations to ensure that competent third-party resources are available to assist the claimants. Examples of resources that SSA will help develop include: transportation and escort services for indigent claimants and those who experience difficulty in getting to consultative examinations; enhancement of medical provider capacity to identify potentially eligible patients, secure claims and provide medical evidence; and software with compatible format design which will allow direct input of claim-related information to SSA. SSA will have an ongoing demonstration program that provides funds for truly innovative projects that test models for national implementation.

In order to expedite the referral of potentially eligible individuals, SSA will develop productive working relationships with Federal, State and local programs that serve individuals with disabilities. Other programs will be able to use SSA-developed decisional support systems to evaluate potentially eligible persons prior to referral and to transfer information to SSA through compatible databases. Local managers will be encouraged to develop and maintain appropriate working relationships with local Federal, State and third-party resources.

Active participation by claimants, supported by SSA's efforts and the contributions of third parties will result in a fundamental shift in claimant expectations and satisfaction with the SSA disability process. From the SSA perspective, the results will be better service to customers through timely, fully supported decisions rendered at all decisional levels; better use of SSA resources focused on helping those who need assistance; and greater public confidence in the disability adjudication process.

Workforce Maximization

Teamwork and workforce empowerment are fundamental ingredients in the new process. In carrying out their duties and responsibilities, adjudicators will work in a team environment with internal medical and nonmedical experts, who provide advice and assistance for complex case adjudication, as well as with technical and other clerical personnel who may handle more routine aspects of case development and payment effectuation. The disability claim manager will be the focal point at the initial claim level, assisted by technical and medical support staff. The adjudication officer will be the focal point at the prehearing level, relying on technical and medical support staff, as well as interacting with the disability claim manager and the ALJ, as necessary. The ALJ will be the focal point at the hearing level, receiving support from technical and medical support staff, and also interacting with the adjudication officer and disability claim manager, as necessary.

Each team member will have at least a basic familiarity with all the steps in the process and an understanding of how he/she complements another's efforts. Team members will be knowledgeable but will also be able to draw upon each other's expertise on complex issues. Communication among team members will encourage consistent application of disability policy. Improved automated systems will enable members of the team to work together using a shared data base even when they are not co-located. Handoffs, rework, and non-value steps will be significantly reduced and fewer employees will be involved in shepherding each claim through the process.

Employees will perform multiple tasks instead of singular activities, thus their roles will expand to encompass more of the "whole" job. This will enable employees to experience the direct relationship between their actions and the final product. Adequate resources and sufficient training and mentoring will allow employees to acquire the skills they need to process claims from intake through adjudication. Employees will feel more of a sense of ownership for the services they perform as a member of a team focused on serving claimants.

The new process will rely heavily on increased employee empowerment, applying information technology and using professional judgment to complete tasks more effectively and efficiently without constant checking, direction and micro-management. Recognition and reward processes will be revised to emphasize contributions to team outcomes and acquisition of knowledge bases. Continuous quality improvement activities will foster ongoing incremental process change.

Representatives: New Rules and Standards of Conduct

The Social Security Act and regulations have long recognized the representational rights of claimants and have provided an administrative framework designed to ensure that claimants will have access to the legal community and others in the pursuit of their claims. Representatives currently have the option for authorization of fees through two procedures: 1) the fee petition method, whereby the representative presents an itemization of services rendered and time expended, and SSA determines a reasonable fee; and 2) the fee agreement method, whereby the claimant and representative agree to a fee of 25 percent of the retroactive benefits due or $4,000, whichever is less.

Focus groups of claimants and the general public have indicated that the disability program is too complex to understand and the process too fragmented and difficult for them to navigate alone. While many claimants resent having to pay a representative to establish entitlement to government-sponsored benefits, they feel that they have no choice if they want to be successful in this pursuit. Although the current regulations provide protection for claimants from fee abuses, these rules fall short of assuring claimants that the representatives they retain are qualified and will adequately represent their interests.

In the new process, SSA will continue to have a responsibility for monitoring representational activity and for safeguarding the interests of claimants. The new process will establish rules of representation and standards of conduct to ensure that representatives fulfill their responsibilities and serve the needs of the claimants they represent. These new rules will, among other things, ensure that claimants receive competent representation; establish a code of professional conduct for representatives in all matters before SSA; and provide sanctions against representatives, including suspension and disqualification from appearing before the Agency in a representative capacity, for violating the rules of representation and standards of conduct. Without disturbing the statutory intent of facilitating claimant access to representatives, the simplified and user-friendly new process may well result in more claimants pursuing their claims without representation. However, the issue of representation will remain a matter of a claimant's personal choice. The new rules and standards of conduct provide the framework for assuring that representatives claimants retain will be qualified, will have the obligation to fully develop the record on their behalf, will adequately represent their interests, and will be accountable for misconduct or dereliction of duty.

SSA will also conduct outreach efforts with the legal community, to ensure that information about the disability programs is widely available to the organized bar and the Federal judiciary. Policy documents, regularly updated electronically, and rules of representation will be available at forums sponsored by the organized bar and in initial orientation and continuing legal education programs designed for Federal judges.

Information Technology

Information technology will be a vital element in the new disability claim process. To the fullest extent possible, SSA will take advantage of the "Information Highway" and those technological advances that can improve the disability process and help provide world-class service. The new process will rely on seamless, electronic processing of disability claims from the first contact with the claimant to the final decision, including all levels of administrative appeal. Existing Agency design plans for Intelligent Workstation/Local Area Network (IWS/LAN) and a Modernized Disability System will provide an integrated system and the electronic connectivity necessary to support the new disability process.

In a seamless electronic environment, all employees will use the same hardware, the same claim assignment and scheduling software, the same decision support software, the same case control system, the same fiscal and accounting software, the same integrated quality assurance functionality, and the same management information system throughout all stages of the process. In this environment, data will need to be input and validated once and multiple employees may access a single claim record simultaneously.

Information technology will be applied to enhance access to services by claimants, their representatives, and other third parties. Claimants will be able to conduct business with SSA via telephone, self-help workstations, kiosks, videoconferencing, and electronic data transfer at SSA facilities and other satellite locations. SSA will conduct forums and produce video and computer-based training materials for third parties who wish to participate in assisting claimants to file applications and gather medical evidence. Wherever possible, physicians and health care organizations, advocates, community counseling services, and other professionals who regularly provide assistance to SSA claimants will be supplied with SSA software to electronically complete Agency forms. Data will be transferred to SSA using agreed upon methods. SSA will allow authorized representatives appropriate access to electronic claim folders. Paper versions of treating source forms will be designed so that the data can be read by scanning equipment into SSA claim processing systems. A single vendor payment system will be used to pay certain evidence providers for information which they provide SSA. To further paperless processing, SSA will adopt a "signature on file" policy for the claimant's evidence release authorization to eliminate routing of paper medical release forms.

The ability of decisionmakers to conduct thorough interviews and evidence evaluation, and timely and accurate claim adjudication is predicated on the implementation of the functionality provided by the IWS/LAN hardware and software components, and the decision support features of the Modernized Disability System. Expert system software will be included in SSA claim processing systems to assist disability decisionmakers in the analysis and evaluation of complex eligibility factors, and to ensure that the correct procedures for disability evaluation are followed. While conducting interviews, disability decisionmakers will rely on decision support features that ask impairment-specific questions. The decision support system will use the accumulated data of the electronic record to assist in the preparation of the predecision notice, the statement of the claim, and decisions rendered on appeal. Where disability decision team members cannot be physically co-located, they can remain in communication by using two-way TV and other videoconferencing technologies. Disability policy will be developed and stored in a format that can be integrated into computer systems as the source of context-sensitive help screens and decision-support messages.

Quality assurance features fully supported by the Modernized Disability System will be integrated throughout the new process. For example, the national end-of-line quality review sample will be electronically selected and automatically routed to appropriate staff. In-line programmatic quality assurance, enhanced by the use of decision support systems, will be programmed into the computer

applications and will help to identify errors of both oversight and substance, and also support routine analysis to aid in avoiding future similar errors. An on-line technical review will occur each time information is added to the electronic record.

Quality assurance and productivity measures will be incorporated in a new, total-process management information system. Meaningful, timely management information for the disability process is dependent on a seamless data processing system used by all components which affords a common case control system and a common data base. SSA's claim processing systems integrated on an Agency-wide IWS/LAN platform will provide this seamless environment.

Cost and Benefits

Introduction

SSA's strategy of coming to closure on an ideal, high-level disability process design before undertaking detailed operational and implementation planning has been consistent from the beginning of the reengineering project. Although this project management approach served SSA well, it has made the very necessary task of cost/benefit projections unusually challenging. The following cost/benefit forecasts will need to evolve as implementation details are developed. The administrative cost numbers presented here cannot be applied to SSA's administrative budget without further analysis.

SSA will move forward on all aspects of the process redesign plan; however, because of the extensive research and development required for implementation of the simplified disability determination methodology, we have not considered the effect of this redesign feature in our cost/benefit planning. In addition, because the ability of a single employee to master the disability claim manager position is dependent on full adoption of a simplified disability determination methodology, the impact from that process redesign feature has also been separated out from our cost/benefit planning at this time.

Service Improvements

Service to the public, as defined by average processing time, would improve dramatically—from around 150 days to pay an initial disability claim today to 60 days after implementation of the new process. Hearing processing time would also improve from about 550 days to 225 days. These figures were derived from running a computer simulation model of the new process.

Program Costs

Under the supposition that SSA's current initial claim and administrative appeal process leads to correct disability determinations within the proper universe of people today, and because SSA is not proposing any changes in the statutory definition of disability, the redesigned process in and of itself would have no long-term effect on program outlays.

Administrative Costs and Savings

The project life period for implementing disability reengineering is from October 1, 1994 to September 30, 2000. However, the full benefits from the redesigned process will not be realized until September 30, 2001.

Cumulative administrative costs during the life of the project are estimated at $148 million. The largest percentage of these costs will be directed to special workforce training on the new process—a critical enabler if the redesign plan is to work. The redesign will not require additional investments in information technology spending over current SSA plans.

Cumulative administrative savings through FY 2001 are estimated at $852 million. The bulk of these savings will come from more efficient use of Federal and State workyears to process the anticipated disability initial claim and appeal workloads during the project life period. This savings estimate does not factor in Agency resource needs for working existing backlogged disability cases.

Subtracting cumulative administrative costs of $148 million from cumulative savings of $852 million will result in a pay back to the government of $704 million through FY 2001.

Ongoing administrative cost savings will be over $305 million annually, beginning in FY 2001. This figure includes spending increases for enhanced employee education, better office security, and expanded claimant services.

The administrative cost savings associated with this project—$704 million during the implementation period, and $305 million annually, thereafter—will allow the Agency to reallocate existing resources to give more attention to other important workloads.

SSA's workforce profile, with respect to disability process workloads, would include at least the same number of professional positions currently employed at the federal and state level. However, the overall design, if fully implemented with all the process enablers—especially enhanced automation—would require fewer clerical and support positions to handle projected workloads.

Conclusion

SSA is committed to implementing a new disability determination process that will deliver significantly improved service to the public, remain neutral with respect to program dollar outlays, and will be more efficient to administer.

Administrative cost savings from the process will allow the Agency to reallocate resources to give increased attention to other important workloads.

However, the redesigned process cannot be implemented without the full funding, development, and installation of a new case processing computer system. In addition, unless SSA invests substantially more funds for research and development of the simplified disability determination methodology, the full benefits of the redesigned process—including better public service and the potential for even greater long-term administrative efficiencies—will not be possible.

Implementation Strategy

Overview

The disability process redesign is a high-level process description that provides a broad vision of how a new process would work but leaves operational, organizational, and other details for later development and implementation. SSA must now begin to transition from the high-level analysis into this latter phase. As SSA implements the new process, the five objectives of the redesign effort must continually be kept in the forefront of implementation planning, execution and assessment: the process will be user-friendly for claimants and those who assist them; the right decision will be made the first time; decisions will be made and effectuated quickly; the process will be efficient; and the new process will provide employees with a satisfying work environment. The success of the new process must be measured against these objectives and emphasis must continually be on overall measurement from the customer's perspective, and not individual component results. Implementing a process of the magnitude of the new disability claim process will require a strategy that is comprehensive, creative, and inclusive. The following provides a general framework for how implementation activity will proceed.

Implementation Framework

Planning for the implementation of the new process vision requires a comprehensive approach that moves forward on multiple fronts simultaneously. Although the new process will not be fully implemented until FY 2001, SSA must start on October 1, 1994 (the beginning of FY 1995), to initiate activities, changes and improvements that will establish the plan and pace for the long-term full implementation of the new process. The goal is to make near-term, visible improvements while at the same time building for long-term results.

Multiple Track Approach

Immediate or near-term implementation activities are those that can begin in FY 1995 and will be fully implemented nationwide by the end of FY 1996, or for which the research and development or site testing can be initiated within the next two fiscal years. These activities include streamlining and simplification initiatives or other procedural elements of the new process that can be implemented using existing administrative or regulatory discretion. They also include client-service activities associated with improving the claimant's access and entry into the disability claim process; the development and site testing of options for streamlining parts of the administrative appeals process; the provision of consistent training and direction to disability decisionmakers; and the establishment of new measures and the testing of new quality assurance mechanisms. Additionally, because the decision methodology associated with the new process depends on significant amounts of research, consultation, development and refinement, SSA must identify the specific research needs, develop the appropriate scope of work and award research contracts as near-term activities.

Long-range implementation items are those requiring extensive research and development that could not be tested fully before FY 1999 or could not be fully implemented nationwide before FY 2001. These activities are those associated with the full development, testing and refinement of a new decision methodology. They also include the implementation of advanced technology enhancements that provide a single, fully-integrated disability claim processing system which supports paperless claim processing and provides interactive capabilities for claimants and those who assist them, and for providers of evidentiary information.

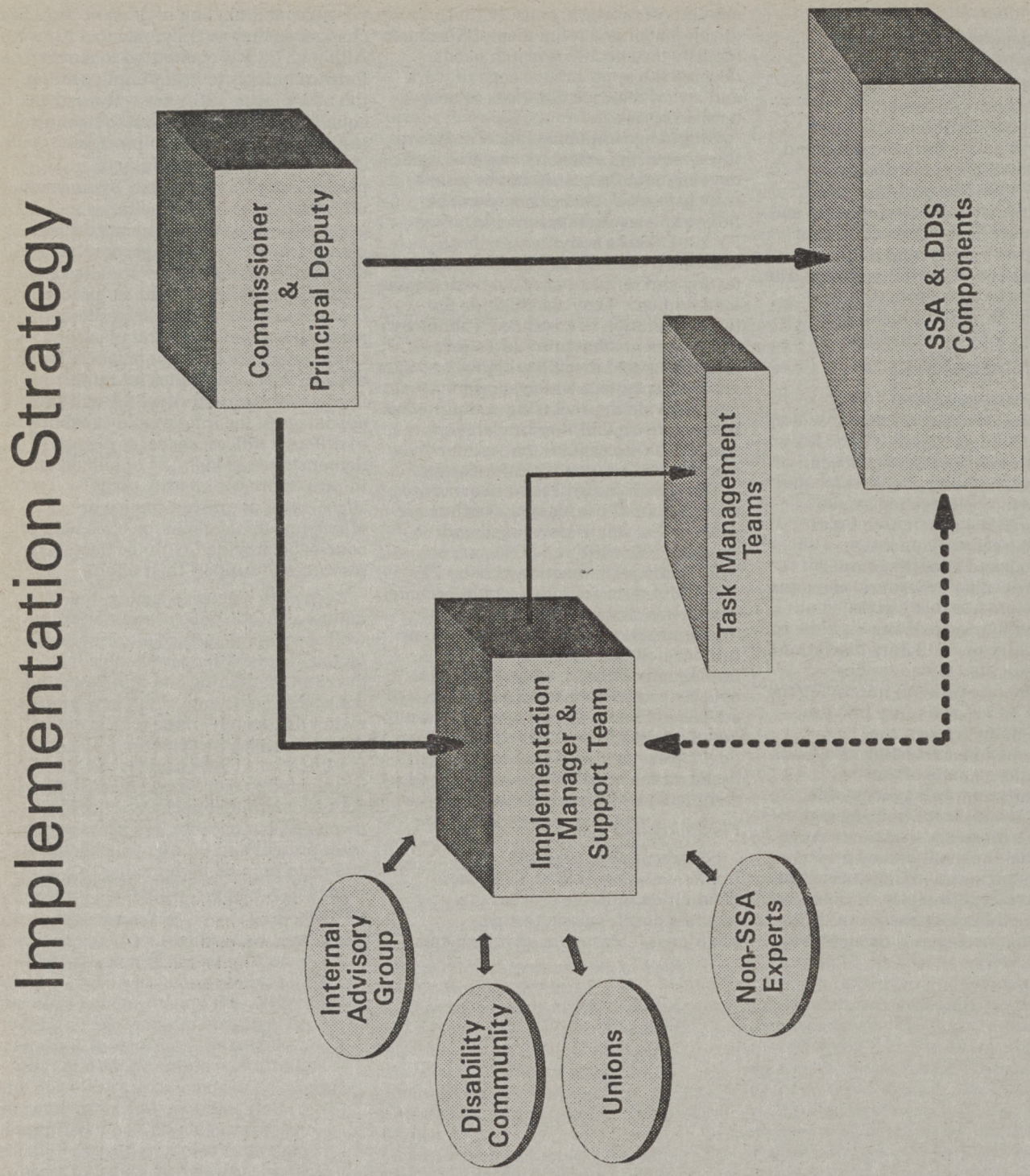
The remaining mid-term items or activities are those elements of the new process that can be developed and tested in FYs 1997 and 1998 and/or fully implemented nationwide by FY 1998. Mid-term activities would include such items as the phased testing and implementation of new service options; full development, testing and implementation of a streamlined appeals process; the testing of more advanced technology enhancements; and the activities associated with developing the decision methodology based on the results of research efforts completed by the end of the near term.

Flexibility and Testing

SSA recognizes that full implementation of the new process vision is an iterative process that requires development, testing, additional information gathering and possible modification of process changes as they are implemented. Although SSA is committed to moving forward quickly to begin implementing the new process, SSA has embraced an equally strong commitment to rigorous testing and refinement of process changes before they are fully or permanently implemented. Testing may include, but is not limited to, geographic or time-limited site testing, using "laboratory" settings, or relying on specific case studies. Formalized testing is most appropriate for process changes that depend on longer-term research and development, phased implementation or major organizational change. In selecting sites for initial implementation activity, SSA will take advantage of the interest and capability of different offices, states, or regions to demonstrate the viability of immediate improvements or identify early successes in improved service or efficiency. Implementation sites will, of course, be provided with the necessary resources to support their efforts.

Even with extensive testing, the nature of public policy formulation, as well as sound management principles, dictate that SSA remain flexible in developing, refining and implementing the specific elements of the new process vision. Ultimately, if the results of the iterative process necessitate modifications to the process vision, SSA is prepared to make those modifications. SSA is committed to change, not for its own sake, but because it is necessary to meet present and future challenges as it strives to provide high-quality, responsive, world-class service to its customers.

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Employees Will Make Change Happen

Overall leadership, control, and coordination of all implementation activities are vested in the Implementation Manager, who will report to the Commissioner and Principal Deputy Commissioner. As part of these responsibilities, the Implementation Manager, with the assistance of a support team, will establish implementation priorities, develop specific timelines, and provide oversight to ensure that implementation decisions are consistent with the new process visions and the five process objectives.

Although the Implementation Manager will be the focal point for all implementation activities, it is the employees and organizational components in the SSA and DDS communities who will make the new disability claim process a reality. Front-line employees will be asked to directly participate in the development, testing and implementation of process changes. They will also provide feedback on the effectiveness of the these changes. Task management teams will be chartered to address specific implementation issues and their duration will depend on the nature of their issue. For example, task teams that might be expected to require a longer-term existence are those dealing with decision methodology or organizational readiness and change management. The task teams will bring together staff from the affected SSA and DDS components to provide the necessary guidance for actual implementation action by organizational components. Central office components, working with their Regional office counterparts, will be responsible for ensuring that necessary implementation actions are effectuated.

SSA will rely on an internal Advisory Group, comprised of SSA executives and union and association leaders to provide advice and guidance on implementation activities and facilitate communication about implementation plans.

Non-SSA Experts and Interested Parties

SSA will use an inclusive process that seeks input from a variety of non-SSA communities including, but not limited to, disability advocates, physicians, other health care and rehabilitation providers, and the private disability and health insurers. The goal of this inclusive process is to foster creative relationships with non-SSA experts so that SSA can have access to specialized expertise and advice as implementation activities progress.

Open Lines of Communication

SSA's unprecedented effort to establish new and beneficial communication channels during the various phases of the disability claim process redesign lays the groundwork for continued communication during implementation. The internal and external contacts and the avenues of communication established during the public dialogue period will continue and will be an integral part of the implementation process. SSA will continue open lines of communication about implementation of the new process with individuals and organizations who have a stake in the disability process, including front-line employees, representatives from Federal and State employee unions and associations, other Federal agencies, the Congress, the judiciary, and disability advocates. SSA will use all appropriate avenues of communication, including written materials, telecommunications, and personal briefings, to ensure that necessary information about implementation activities is regularly and widely disseminated and to develop appropriate feedback channels. Additionally, SSA will explore new opportunities and means of communicating with both internal and external audiences to permit meaningful exchanges of information.

Appendix I: Methodology

Business Process Reengineering

The Process Reengineering Program is the culmination of a rigorous SSA investigation of the reengineering efforts and methodologies of those companies, public organizations, academic institutions, and consulting firms with the most "hands on" experience in this field. The positive findings from this detailed review, combined with concerns about existing business processes within SSA and the quality of SSA service to the public, led management to the conclusion that a process reengineering effort was critical to the SSA objective of providing "world-class" administration and service.

Based largely on analysis of what has worked best in the private and public sectors, a customized reengineering methodology was developed within SSA. It uses a reengineering team approach that combines a strong "customer" focus with classic management analysis techniques, and computer modeling and simulation, to intensely review a single business process. The objective is not to make small, incremental improvements in the various pieces of the process, but to redesign it as a whole, from start to finish, so that it becomes many times more efficient and, in so doing, significantly improves SSA service to the public.

A senior SSA manager was selected to serve as Director of the Process Reengineering Program. The Director leads all SSA process reengineering efforts, is the primary liaison with the Commissioner and Executive Staff, nominates topics for examination, chairs project steering committees, and directs a small professional staff and revolving group of managers/consultants.

SSA uses special, multi-disciplinary teams of individuals to conduct reengineering analyses and identify the best ways to redesign and significantly improve processes. Teams are comprised of outstanding employees, all of whom are subject matter experts in operational, programmatic, policy, systems, administrative, and other areas relevant to the business process.

Reengineering teams focus on identifying those procedural and policy changes to the process that will: make it more claimant and service oriented; greatly increase productivity and process speed; take advantage of opportunities offered by new technology; and improve the empowerment and professional enrichment of the employees who are part of the process. Although teams follow the same basic reengineering protocol, continual customization is both expected and encouraged.

Disability Process Reengineering Project

An Executive Steering Committee was formed to meet on a regular basis to provide advice to the Commissioner on development of the disability reengineering process change proposal, and to ensure that support occurred at the highest levels of the Agency. The Executive Steering Committee established the following parameters and expectations for the project which are driven by targets set forth in the Agency Strategic Plan and based on percentages of service and/or productivity:

Parameters and Expectations for Reengineering the Disability Determination Process (9/15/93)

Definition of Process

The "process" to be reengineered is the initial and administrative appeals system for determining an individual's entitlement to Social Security and Supplemental Security Income disability payments. It includes all actions from an individual's initial

contact with SSA through payment effectuation or final administrative denial. The system for determining whether an individual continues to be entitled to receive disability payments is not part of this "process."

Rationale: The process to be reengineered must be defined broadly to increase the opportunity for improvement. The continuing disability review system is not included because it is conceptually and practically distinct from the initial disability determination process.

Parameters

Every aspect of the process except the statutory definition of disability, individual benefit amounts, the use of an administrative law judge as the presiding officer for administrative hearings, and vocational rehabilitation for beneficiaries, is within the scope of this reengineering effort. However, analysis and ideas for change should proceed and be presented on two tracks: improvements achievable without changes in statute or regulations and innovations that may require such change.

Rationale: The timing of legislative or regulatory change is beyond SSA's control. Such change could not reasonably be expected to be implemented in less than 2 years. However, limiting the reengineering effort to aspects of the process not requiring change in statute or regulations was rejected as limiting too greatly the possibility of major improvement/innovation in the process. The two-track approach provides for both shorter term incremental improvements and longer term, more radical change.

Expectations

1. Unless otherwise specified here, the recommendations for change should be consistent with the goals and objectives set forth in the Agency Strategic Plan.

2. Recommendations for change, taken as a whole, should not cause changes in benefit outlays unless as a necessary result of improvements in service, such as more timely processing and payment of claims.

3. Process changes should improve service and/or productivity, on a combined basis, by at least 25 percent by the end of FY 1997 over levels projected in the FY 1994 budget (it would require about an additional $500 million currently to realize such improvement) and decisional accuracy should not decrease. By FY 2000 additional actions, including any necessary statutory and regulatory changes, should provide a further 25 percent improvement.

The Executive Steering Committee facilitated ongoing communications between components and the Team, and communicated the need and reason for reengineering the disability process. They were familiar with the current process problems and were kept apprised of research completed by the Team. In February, the Executive Steering Committee was expanded to include the Presidents of the American Federation of Government Employees, the National Federation of Federal Employees, and the National Treasury Employees Union locals, councils and chapters representing SSA employees; and the Presidents of the SSA and State Disability Determination Services (DDS) professional and management associations recognized by SSA as having an interest in disability issues. A list of Executive Steering Committee members appears at the end of this appendix.

The 18 members of the Disability Reengineering Team, all of whom are SSA or State DDS employees, have varied and extensive backgrounds in all aspects of the disability program. A list of Team members appears at the end of this chapter. Team members attended a high quality, intensive 3-day SSA reengineering methodology training session, and completed extensive reading assignments on reengineering. Some Team members visited organizations who had reengineered their business processes to learn about successes as well as opportunities for improvement. The Team used the following methods to obtain the information necessary to develop a redesigned disability process.

Briefings

Members of the Team received extensive briefings from staff in all SSA components that work with any aspect of the disability process including experts in SSA policy, quality assurance, management information, operational, and appellate processes. Dr. Frank S. Bloch, Professor of Law and Director of the Clinical Education Center at Vanderbilt, briefed the Team on the results of his study comparing disability programs and processes of the United States, Canada, and Western Europe. His work encompasses eligibility requirements and program goals, benefit award structure and short-term benefits, administrative organization, and procedures for claim processing and appeals.

Scan Visits

The Team's conducted extensive fact-finding visits and interviews with members of the disability community. Team members visited 421 locations in 33 States and conducted over 3,600 interviews. Almost 2,900 of these involved front-line employees, managers and executives. The Team conducted an additional 111 interviews by telephone. The Team also interviewed over 750 parties external to SSA for their views. They also publicized surface/electronic mail addresses and fax and voice telephone numbers for those who were not contacted or had additional information to provide.

Individuals and groups both internal and external to the process were interviewed for ideas about a new process. The Team solicited a wide spectrum of opinions about problems with the current disability process and directions for redesign. In addition to individuals in the SSA and DDS communities, the team talked to a wide variety of externals including physicians, health maintenance organizations and hospital officials, disability advocates, attorneys, professional association groups, Federal judges, other Federal agencies, and Congressional staffs.

Prior to site visits and contacts, Team members provided individuals and organizations with general information about the reengineering effort, key research areas, and some unconventional ideas about the disability process so that the interviewees would have an opportunity to think about process issues. The Team encouraged interviewees to provide open and honest opinions, suggestions, and ideas. The interviews provided useful insights into the problems confronting the disability program and recommendations for solving these problems.

Focus Groups

A series of 12 focus groups were held throughout the country to obtain input from members of our claimant population and the general public regarding their experiences with and expectations of the SSA disability process. The focus groups provided the Team valuable information about claimants' expectations and preferences, as well as concerns about the current process. The following is a list of the focus group sites and composition.

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SITE	DATE	GROUP COMPOSITION
Philadelphia, PA	11/30/93	DI Reconsideration SSI Initial Awards
Atlanta, GA	12/01/93	SSI Reconsideration DI Initial Awards
Denver, CO	12/02/93	SSI Claimants General Public
Bridgeport, CT	12/07/93	SSI Hearing DI Claimants
Chicago, IL	12/08/93	Spanish-Speaking Initial Awards General Public
San Jose, CA	12/09/93	DI Hearing Vietnamese-Speaking Applicants and Initial Awards

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Benchmarking

"Internal benchmarking" refers to the identification and understanding of site-specific best practices that currently exist within the Agency and is focused on the improvement and standardization of internal operations. The Team completed this phase of benchmarking by reviewing lists of sites engaging in "best practices" which were submitted by various SSA components, and visiting or telephoning as many of these SSA and DDS offices as possible.

"External benchmarking" is essentially the same, except the search for best practices and proven process innovations is expanded to comparable companies and organizations outside of SSA. It is focused outside the organization and is concerned with the relative performance of one specific function or process. The table below identifies the companies/organizations the Team used as benchmarking partners.

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ORGANIZATION	LOCATION
Health & Welfare Canada Income Security Programs	Ottawa, Canada
Anne Arundel Medical Center, Pathways Program	Annapolis, MD
Mayo Clinic Disability Program	Rochester, MN
Minneapolis Children's Hospital	Minneapolis, MN
Blue Cross of California	Los Angeles, CA
Liberty Mutual Insurance	Boston, MA
Standard Insurance Company	Portland, OR
UNUM Corporation	Portland, ME
Department of Labor and Industries, Workers' Compensation	Olympia, WA
Immigration and Naturalization Service, Board of Immigration Appeals	Arlington, VA
Veterans Administration, Regional Office	New York City, New York
Federal Express Corporation	Columbia, MD
Southwest Airlines	Dallas, TX
Texas Instruments	Plano, TX

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Process Analysis

The Team utilized a document prepared by the SSA Office of Workforce Analysis in April 1993 which outlines the "as-is" disability claim and appeal processes of SSA. The document contains a description of claim processing tasks performed by line-employees in the seven operational components that deal with the disability claim process. Team members also collected, reviewed, and researched an extensive amount of existing procedural guides, laws/regulations, studies conducted by internal and external components, processing time and quality management information, workflows, cost data, etc.

Computer Modeling

Computer models are close representations of work processes that, if properly constructed, allow for better understanding, testing or forecasting, and study. Team members worked with modeling professionals in SSA to build the models used to predict the operation of a redesigned process. A model was built to represent both the current and proposed processes. The model helped the Team assess the best features and performance of the new disability process; to better judge the magnitude of change from one process to another; and to do some "what-if-nothing-changes" analysis to get a feel for the impact of inactivity. A summary of the model assumption and results appears in Appendix II.

Release of Initial Team Proposal

The product of the Team's effort was a redesign proposal that was presented to the Commissioner and Executive Steering Committee on March 31, 1994. The proposal provided the Team's view of the best process improvement and process innovation ideas. The proposal is a high-level concept that provides a broad understanding of how a redesigned process would work but leaves operational, organizational, and other details for later development.

The Team distributed the proposal as widely as possible throughout SSA, the State DDSs, and to interested public and private individuals and organizations with the goal of seeking reactions, items of concern and additional ideas for improvement. Copies of a shorter 25-page version of the Proposal were distributed to all SSA and DDS employees in early April 1994. Copies of the complete 132-page Proposal and Background Report were also distributed to each SSA DDS facility in sufficient numbers to make it easily available to staff. A 30-minute videotape containing remarks by Commissioner Chater and a presentation of the proposal by members of the Reengineering Team was distributed for use in all SSA and DDS facilities. Group feedback discussions with SSA and DDS employees were held in all ten regions and in SSA headquarters components. A survey was distributed to each SSA and DDS employee to assist employees in providing comments.

The Proposal and Background Report was published in the **Federal Register** on April 15, 1994 (59 FR 18188). A 60-day comment period was established to invite public comment on the proposal. A public hearing on the proposal was held in Washington, DC on May 16, 1994. Team members conducted extensive briefings on the proposal with interested parties, including employee unions, professional association groups, disability advocates, the legal community, other Federal agencies, and Congressional staffs.

During the comment period that ended on June 14, 1994, the Team received over 6,000 written responses from all interested parties. The Team reviewed and analyzed each comment received. A summary of the comments is included in Appendix III. In response to reactions received during the comment period, the Team made changes to the original proposal and submitted a revised proposal to the Commissioner and the Executive Steering Committee on June 30, 1994.

After extensive consultation with the members of the Executive Steering Committee, SSA senior staff, representatives from employee unions and associations, disability advocates and others, the Commissioner accepted the Team's recommendations for a redesigned disability process.

Reengineering Design Partners

Director, SSA Process Reengineering Program

Rhoda Davis—Office of the Commissioner, Baltimore, MD

Disability Process Reengineering Team

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Mary Ann Bennett—Office of Budget, Baltimore, MD
Bryant Chase—Office of the Deputy Commissioner for Systems, Baltimore, MD
Kayla Clark—Office of Hearings and Appeals, Seattle, WA
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Process Reengineering Program Executive Steering Committee

Shirley Chater—Commissioner, SSA
Lawrence Thompson—Principal Deputy Commissioner, SSA
Rhoda Davis—Director, Process Reengineering Program, SSA
Dennis Brown—Moderator, Association of OHA Analysts
Bruce Bucklinger—President, OHA Managers' Association
Robert Burgess—President, National Association of Disability Examiners
Mary Chatel—President, National Council of Social Security Management Associations, Inc.
Herbert Collender—President, SSA/AFGE National Council of Payment Center Locals (Council 109)
Renato DiPentima—Deputy Commissioner for Systems, SSA John Dyer—Deputy Commissioner for Finance, Assessment and Management, SSA
Richard Eisinger—Senior Executive Officer, SSA
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Robert Green—SSA Regional Commissioner, Boston
Joseph Gribbin—Associate Commissioner for Program and Integrity Reviews, SSA
James Hill—President, National Treasury Employees Union (Chapter 224)
Arthur Johnson—Chief Spokesperson, SSA/AFGE General Committee
Charles Jones—Director, Michigan Disability Determination Services
David Knoll—President, SSA National Federation of Federal Employees Council of Consolidated Locals
Demos Kuchulis—President, National Association of Senior Social Security Attorneys
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Rose Lucas—President, SSA/AFGE National Council of Data Operations Centers (Council 221)
James Marshall—President, SSA/AFGE National Council of SSA/OHA Locals (Council 215)
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Appendix II: Model Results

Summary Information

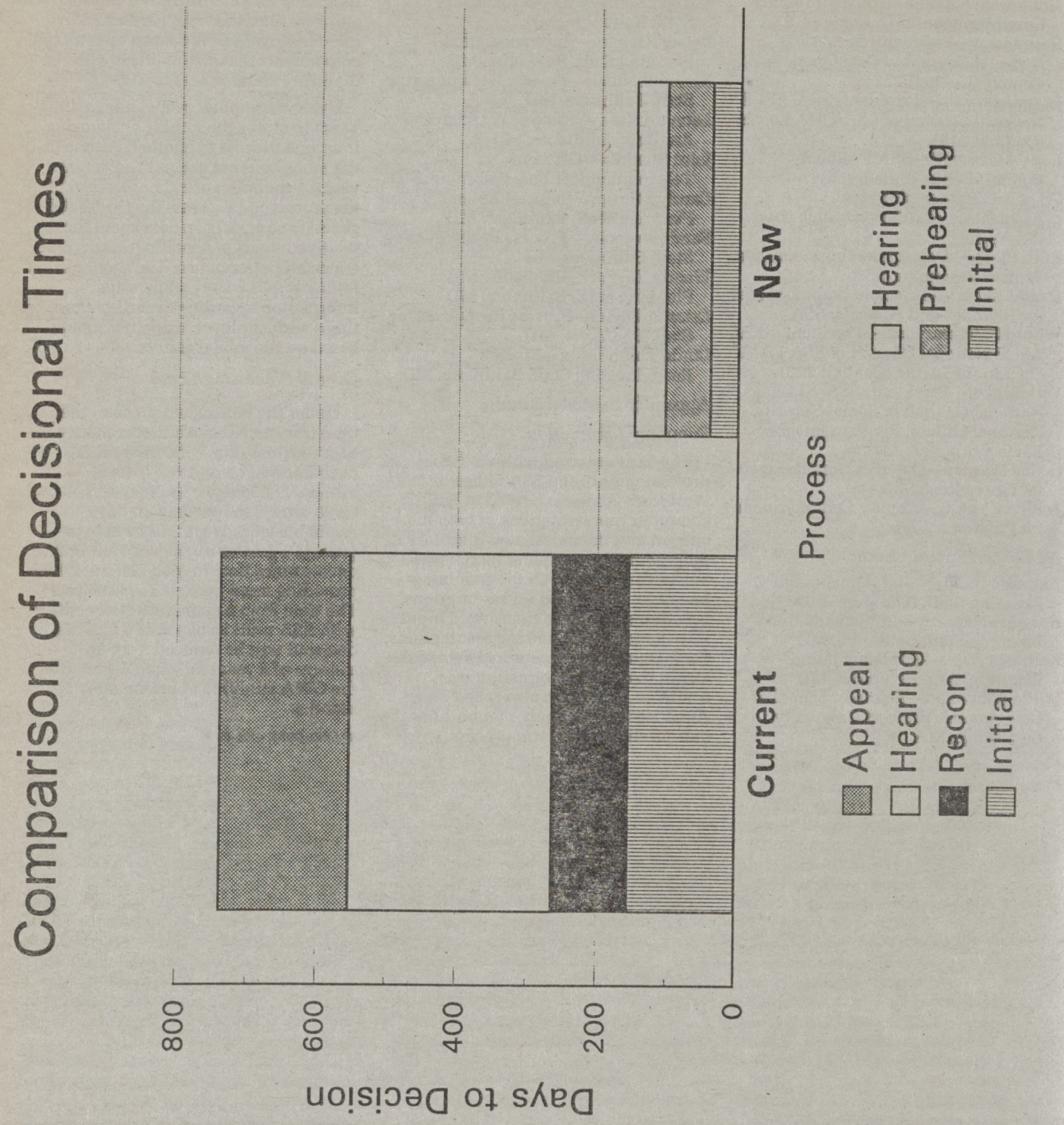
The Team worked with modeling professionals in the SSA Office of Workforce Analysis (OWA) to build computer representations of both the current and the redesigned disability processes. The computer model was built using FORTRAN programming language. Data based on assumptions, task times and lapse times were input into the model. In making assumptions, the team relied on historical data to the extent that such information was available. The Team also relied on an April 1993 OWA study that outlines the current disability claim process, including all administrative appeals, and describes the tasks performed by line-employees in the seven operational components that are involved with the disability claim process.

Using a computer model allowed the Team to assess the impact of changing from one process to another. Although the model did not generate an actual visual simulation of either the current or the redesigned process, the model did generate comparative data about the relative impact of specific features and expected performance. The sections that follow provide key comparative information regarding overall processing times and employee work investment based on the model results.

Overall Processing Times

Under the redesigned process, the time from a claimant's first contact with SSA until issuance of a final initial decision will be reduced from an average of 155 days (as cited in the OWA study) to less than 40 days. Available employees will be able to process a greater number of claims and devote more time to each claimant, thus providing more personalized service. The time from a claimant's first contact with SSA until issuance of a hearing decision will be reduced from an average of a year and a half (as cited in the OWA study) to approximately 5 months.

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Employee Work Investment

The table below provides a comparison of the number of different employees that are likely to make some work investment in a claim at each decisional level in the current and redesigned processes. The following abbreviations were used in describing the types of employees involved at each level.

AAJ—Administrative Appeals Judge
AC—Appeals Council
ALJ—Administrative Law Judge
AO—Adjudication Officer
CA—Claims Authorizer
CR—Claims Representative
DCM—Disability Claim Manager
DDS—Disability Determination Service
DE—Disability Examiner
DW—Decision Writer
FO—Field Office
HAA—Hearing and Appeals Analyst
HO—Hearing Office
MC—Medical Consultant
MG—Management
OPIR—Office of Program & Integrity Reviews
PSC—Program Service Center
QA—Quality Analyst
SA—Staff Attorney
Sup—Support Staff
TA—Technical Assistant
TECH—FO Technician
TSC—Teleservice Center
TSR—TCS Representative

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LEVEL	CURRENT PROCESS	REDESIGNED PROCESS
INITIAL DENIAL	**16:** TSR, TSC Sup, TSC TA, FO Sup, CR, FO Sup, FO MG, DDS Sup, DDS Sup, DE, DDS Sup, DDS MG, DDS Sup, DDS Sup, MC, DDS TA	**7:** TSR, TSC Sup, TECH, DCM, FO Sup, MC, QA
INITIAL TITLE 2 ALLOWANCE	**26:** Initial Denial (16) plus OPIR Sup, OPIR QA, OPIR MC, 7 PSC Sup employees	**8:** Initial Denial (7) plus: TECH
INITIAL TITLE 16 ALLOWANCE	**19:** Initial Denial (16) plus OPIR Sup, OPIR QA, OPIR MC,	**8:** Initial Denial (7) plus: TECH
RECONSIDERATION DENIAL	**26:** Initial Denial (16) plus TSR, TSC TA, FO Sup, CR, FO Sup, DDS Sup, DDS Sup, DE, MC, DDS TA	Not Applicable
RECONSIDERATION TITLE 2 ALLOWANCE	**36:** Recon Denial (26) plus OPIR Sup, OPIR QA, OPIR MC, 7 PSC Sup employees	Not Applicable
RECONSIDERATION TITLE 16 ALLOWANCE	**29:** Recon Denial (26) plus OPIR Sup, OPIR QA, OPIR MC	Not Applicable
PREHEARING TITLE 2 ALLOWANCE	Not Applicable	**11:** Initial Denial (7) plus TSR, AO, MC, TECH
PREHEARING TITLE 16 ALLOWANCE	Not Applicable	**11:** Initial Denial (7) plus TSR, AO, MC, TECH
HEARING DENIAL	**35:** Recon Denial (26) plus TSR, TSC TA, CR, HO Sup, HO Sup, HO Sup, ALJ, SA, HO Sup	**15:** Initial Denial (7) plus TSR, AO, MC, Hearing Sup, ALJ, DW, MC
HEARING TITLE 2 ALLOWANCE	**47:** Hearing Denial (35) plus 10 PSC Sup employees, CA, PSC MG	**16:** Hearing Denial (15) plus TECH
HEARING TITLE 16 ALLOWANCE	**35:** Same as Hearing Denial (35)	**16:** Hearing Denial (15) plus TECH
APPEALS COUNCIL DENIAL	**44:** Hearing Denial (35) plus AC Sup, AC Sup, AC MG, HAA, AC Sup, AC TA, AC Sup, AAJ, AC Sup	**18:** Hearing Denial (15) plus AC Sup, HAA, AAJ **19:** Hearing Allowance (16) plus AC Sup, HAA, AAJ

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Assumptions, Task Times and Lapse Times

Listed below are key assumptions, task times and lapse times that the Team used to model the redesigned process. The task times are shown in minutes and represent the estimated time it will take an employee to complete the described task. For each task time entry, three task time numbers are shown. The middle number represents the most common task time, while the first and last number represent the low and high extremes for that task. The lapse times are shown in work days, rather than calendar days, and represent the number of days between actions or tasks.

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INITIAL LEVEL

- Electronic files will be used in the process redesign.
- Electronic files will eliminate mail time and allow simultaneous reviews of claim files.
- Disability information packets will be widely available. The goal is to target the information to likely applicants and ensure they have a better understanding of the program(s), the requirements and the decisionmaking methodology when they enter the process. Increased public information will enhance claimant involvement in the process and ultimately decrease processing times.
- 50% of all disability interviews will be by appointment. Of these, 75% will be by telephone and 25% will be face-to-face interviews.
- 50% of all appointments will be scheduled via the 1-800 number and the remaining 50% by field components.
- 35% of all disability interviews will be unscheduled walk-ins.
- 10% of all disability applications will be submitted by third parties.
- 5% of all disability applications will be submitted electronically.
- When filed, a hearing appeals request must be made within 60 calendar days of the issuance of the initial denial notice.
- Preliminary initial inquiry interview time: 14-23-35 minutes
- Lapse time between initial inquiry interview and scheduled appointment: 3-4-5 days
- Initial application interview time: 30-45-75 minutes
- Impairment specific questions will assist in obtaining information that is necessary and relevant to the decision and personalize and streamline the interviewing process.
- 3% of telephone interviews will result in abandoned claims.
- Receipt of application/evidence time: 5-10-15 minutes
- Preliminary nonmedical development and review time: 20-40-60 minutes
- 8.5% of all claims will be technically denied.
- 4.5% of all Title 16 claims adopt Title 2 decisions.
- SSA will encourage claimants, who are able to do so, to have the basic forms in the disability information packet completed prior to filing.
- 20% of all claimants will submit sufficient evidence to make a decision at the time of the interview or receipt of the application.

- 80% of all claimants will not submit evidence sufficient to make a decision at the time of the interview or receipt of the application.

- Medical evidence of record (MER) will be requested in 75% of all claims requiring evidence. Assuming that MER will generally include complete functional assessment (FA) information, in 25% of these claims, a separate FA will be needed.

- Consultative examinations (CEs) will be requested in 25% of all claims requiring evidence. CEs will contain FA information.

- CEs will generally be requested for claimants that have no treating source, or their treating source is unable or unwilling to provide the necessary evidence, or there is a conflict in the evidence that can not be resolved through treating source evidence.

- Medical evidence request time:

MER:	10-15-20 minutes
CEs:	10-15-20 minutes
FAs:	10-15-20 minutes

- Lapse time between request and receipt of medical evidence:

MER:	4-10-20 days
CEs:	6-10-14 days
FAs:	6-10-14 days

- The use of standardized forms to request medical evidence will streamline the collection of necessary evidence.

- A national fee reimbursement schedule will utilize a sliding mechanism to reward early submission of medical evidence, as well as, the quality of evidence received.

- The process of requesting medical evidence will be fully automated. Follow up letters for medical evidence will also be automatically generated by the claim processing system.

- The procurement and payment process for medical evidence will be fully automated.

- On average, number of pieces of MER requested or submitted: 1-2-3 pieces

- Evidence receipt, case association, record update time: 3-7-15 minutes

- Medical evidence review and analysis time:

MER:	10-15-20 minutes
CEs:	10-15-20 minutes
FAs:	20-25-30 minutes

- Field components will have established local contracts with area hospitals/medical centers/etc. to provide CEs and FAs within specified timeframes.

- Automation will, where possible, allow direct contact between the field component and the CE and/or FA source for scheduling purposes.

- 40% of all cases will require medical consultation.
- Medical consultation time: 25-30-45 minutes
- Initial level medical adjudication time: 10-15-30 minutes
- Approximate percent of cases allowed at the initial level prior to issuance of predecision notice: 45%
- Approximate percent of cases allowed at the initial level after issuance of the predecision notice and additional review: 4%
- Predecision notice preparation time: 5-10-20 minutes
- Lapse time to submit evidence or request personal interview after issuance of predecision notice: 10 days
- 50% of the cases receiving predecision notices will request personal interviews.
- 50% of the cases not requesting a personal interview will submit (or require) additional evidence.
- 50% of the cases requesting a personal conference will also submit (or require) additional evidence.
- On average, the number of new pieces of evidence requested or submitted: 2 pieces
- Personal interviews will be conducted in person, by videoconference, by telephone, or by whatever means the field component determines is appropriate under the circumstances.
- Personal interview time: 30-45-60 minutes
- Evidence receipt, case association, record update time: 3-7-15 minutes
- Predecision analysis and review time: 10-30-45 minutes
- 40% of all predecision notice cases will require medical consultation.
- Medical consultation time: 25-30-45 minutes
- 73% of allowances are Title 16 or concurrent claims. 47% are Title 2 or concurrent claims.
- Lapse time between claimant contact and effectuation interview: 3-4-5 days
- 75% of effectuation interviews are face-to-face and 25% are completed by telephone.
- 90% of effectuation interviews will require that additional evidence be submitted after the interview.

- Lapse time between effectuation interview and submission of evidence: 2-10-18 days
- Receipt of effectuation application/evidence time: 5-10-15 minutes
- Title 16 effectuation interview and review/analysis of evidence: 50-100-145 minutes
- Average technical effectuation assistance time: 10-20-35 minutes
- Preparation of "statement of claim" time: 20-30-40 minutes
- Notices at both levels of the process will be prepared using the automated claim processing and the decision support system.

HEARING LEVEL

- Percentage of initial denials filing a hearing request (H/R): 45%
- Representation level at the hearing stage will drop to 50%
- 50% of all appeal interviews will be by appointment. Of these, 75% will be by telephone and 25% will be face-to-face interviews.
- 50% of all appeal appointments will be scheduled via the 1-800 number and the remaining 50% by field components.
- Preliminary appeal interview time: 14-23-35 minutes
- H/R interview time: 20-25-30 minutes

ADJUDICATION OFFICER

- Initial review of H/R and file time: 10-15-30 minutes
- Preliminary telephone/letter contact with claimant and/or representative time: 20-30-45 minutes
- A hearing will be scheduled using the automated claim processing system approximately 45 days after the R/H has been filed. Numerous factors (i.e., leave, training, etc.) will be considered when creating the hearing dockets.
- 50% of the R/Hs will request a personal conference.
- Lapse time between preliminary contact and personal conference: 5-10-15 days
- Percentage of cases requiring time for submission of additional evidence after personal conference: 30%
- On average, number of pieces of evidence requested or submitted: 2 pieces

- Lapse time between personal conference and receipt of evidence: 10-20-30 days
- Evidence receipt, case association, record update time: 3-7-15 minutes
- Analysis and review of evidence time: 10-20-30 minutes
- 25% of all personal conference cases will require medical consultation.
- Medical consultation time: 25-30-45 minutes
- Allowance decision preparation time: 30-45-60 minutes
- Stipulation preparation time: 45-60-75 minutes
- Approximate percent of R/H cases allowed prior to ALJ hearing: 25%
- Approximate percent of R/H cases referred to an ALJ for hearing: 75%

ADMINISTRATIVE LAW JUDGE

- ALJ prehearing review and analysis time: 20-40-60 minutes
- Length of hearing time: 20-40-60 minutes
- 25% of all hearing cases will require medical consultation.
- Medical consultation time: 25-30-45 minutes
- 10% of all hearing cases will submit (or require) additional evidence after the hearing.
- Lapse time between hearing and receipt of evidence: 10-20-30 days
- Request and evidence receipt time: 10-15-30 minutes
- Analysis and instruction preparation time: 10-15-20 minutes
- Preparation of allowance decision time: 30-45-60 minutes
- Preparation of denial decision time: 60-90-120 minutes
- Final editing and preparation of decision time: 5-10-15 minutes
- Final review and sign off time: 10-15-20 minutes
- Approximate percent of cases allowed at ALJ level: 20%
- Approximate percent of cases denied at ALJ level: 80%

APPEALS COUNCIL OWN-MOTION PREEFFECTUATION REVIEW

- Minimum percent of ALJ cases selected for own motion preeffectuation review: 5%
- Lapse time for own motion preeffectuation review: 8-12-20 days
- Routing and case control function time: 13-15-17 minutes
- Analysis and recommendation time: 105-150-180 minutes
- Final review and approval time: 15-30-60 minutes
- Results of preeffectuation own motion review:
  - Affirmed: 90%
  - Reversed: 2%
  - Remanded: 8%

MISCELLANEOUS

- Minimum percent of cases filing civil actions: 5%
- Percent of cases filing a civil action will decrease as overall claimant satisfaction increases and overall processing times decrease.
- The court affirmation rate will rise and the remand rate will decrease as the quality of SSA decisions is enhanced as the Agency implements the various component pieces of the process redesign. This result will also affect (decrease) the percent of cases filing a civil action.

BILLING CODE 4190-29-C

Appendix III: Summary of Comments on Reengineering Proposal

Overview

During the comment period that began on April 1, 1994 and ended on June 14, 1994, the Team received over 6,000 written responses from SSA and DDS employees, employee unions, professional associations, members of the public, claimant representatives, physicians, State governors, claimant advocate groups, Federal components, and other interested parties. Fifty-three percent of the written responses came from SSA employees, 21% came from DDS employees, and 26% came from individuals and organizations external to the SSA/DDS community. Members of the Team read, analyzed, and collated every one of those 6,210 comments so that no idea, reaction, or nuance would be overlooked.

For the commenters who presented written reactions to the overall proposal, 52% were favorable to the overall concept, 39% were unfavorable, and 9% were neutral. Approximately 10% of these commenters believed no reengineering was needed. Beyond the request for written comments, additional means of gauging reaction to the proposal were also employed: group employee feedback discussions were held in over 80 sites across the country with almost 2,000 SSA and DDS employees participating; a public meeting was held in Washington, D.C.; and Team members conducted briefings and spoke with more than 3,000 individuals and organizations about the proposal during the comment period.

There was a very mixed reaction to the proposal. Very few verbal or written responses were totally favorable or unfavorable toward the proposal—those liking it had concerns about some elements while those generally disliking it found portions which they believed would be improvements over the current process. Many commenters, regardless of expressing praise or concern, addressed very limited aspects of the proposal without providing a reaction to the overall proposal.

Profile

The comments expressed can be categorized as follows:

—SSA received widespread praise for taking on the task of redesigning the disability claim process. The prevalent belief was that dramatic improvements are needed to provide better service and handle workloads more effectively. Whether fully supporting the proposal or not, most commenters expressed concern that the system is broken and that only radical redesign will solve the problems that currently exist.

—The most popular concepts were (*listed from most to least frequently mentioned*):

• Elimination of the reconsideration step;

• The disability claim manager as single Agency point of contact in the initial claim;

• A single presentation of substantive policies for all decision makers;

• Encouragement of the claimant to be a partner in the development of the claim;

• Elimination of the mandatory Appeals Council review step;

• Increased reliance on the use of information technology;

• Increased public awareness and education about program requirements;

• Evidence development tailored to claimant circumstances;

• Disability claim managers empowered with full decisionmaking authority; and

• The general aspects of the proposed disability methodology.

—The greatest concerns centered around (*listed from most to least frequently mentioned*):

• Personal safety of disability claim managers;

• Ability of one person to fulfill the disability claim manager role;

• Pre-denial personal interview with disability claim manager;

• The general aspects of the proposed disability methodology;

• Encouragement of the claimant to be a partner in the development of the claim;

• The disability claim manager as single Agency point of contact in the initial claim;

• Development and use of an Index of Disabling Impairments;

• Use of standardized forms to request evidence from treating sources;

• Reliance on treating source certification of existing evidence; and

• Potential bias of disability claim managers.

—Many of the responses centered around how the proposal would be implemented and what organizational changes would be needed to make the new process work.

—There were concerns about whether the proposal would meet the objective of not increasing or decreasing program costs with fairly divided opinions about whether the new disability methodology would allow or deny more claims than the current methodology. Reliance on treating sources as preferred sources of medical evidence and personal bias resulting from disability claim manager face-to-face meetings with claimants were often cited as the reason for the belief that there will be an overall increase in allowed claims. The new four-step evaluation process was cited as the most common reason for the belief that there will be an overall increase in denied claims.

[FR Doc. 94–22491 Filed 9–16–94; 8:45 am]
BILLING CODE 4190–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for a Residential Development called Bal Harbour subdivision, in Brevard County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Gen Real Estate and Management Company (Applicant), is seeking an incidental take permit from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973, (Act) as amended. The permit would authorize the take of the Florida scrub jay, Aphelocoma coerulescens coerulescens, a threatened species, in Brevard County, Florida, for a period of 5 years. The proposed taking is incidental to construction of ±60 single family homes including the necessary infrastructure on approximately 15.1 acres (Project), all of which contains occupied Florida scrub jay habitat to be permanently altered. The Project is called Bal Harbour, and is located along State Road A1A south of the city of Melbourne, in the Coconut Point area of Brevard County, Florida.

The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA or HCP may be obtained by making a request to the Regional Office address below. This notice also advises the public that the Service has made a preliminary determination that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is based on information contained in the EA and HCP. The final determination will be

made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA and HCP should be received on or before October 19, 1994.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, or the Jacksonville, Florida, Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT–794539 in such comments:

Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345, (telephone 404/679–7110, fax 404/679–7081).

Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216–0912, (telephone 904/232–2580, fax 904/232–2404).

FOR FURTHER INFORMATION CONTACT: Dawn Zattau at the Jacksonville, Florida, Field Office, or Rick G. Gooch at the Atlanta, Georgia, Regional Office.

SUPPLEMENTARY INFORMATION: *Aphelocoma coerulescens coerulescens* is geographically isolated from other subspecies of scrub jays found in Mexico and the Western United States. The scrub jay is found almost exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that the scrub jay population has been reduced by at least half in the last 100 years.

The scrub jay survey provided by the Applicant indicates that two families currently use the suitable habitats within the Project. The Applicant proposes to impact the territories of both families. Initial construction of roads and utilities and subsequent development of individual homesites may therefore result in death of, or injury to, scrub jays incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with property development may reduce the availability of feeding, shelter, and nesting habitat. To minimize the mitigate the impacts of the loss of 15.1 acres of scrub jay habitat, the Applicant will purchase 30.63 acres of scrub habitat known to support the scrub jay, deed the property to Brevard County, and provide a management endowment of $30,630 to ensure management of the site in perpetuity. Other measures proposed by the Applicant include control of invasive plant species from the Project, and protection of active nests, if discovered, during the nesting season.

The EA considers the environmental consequences of three alternatives, including acceptance of the HCP as submitted, consideration of management of surrounding publicly-owned lands as mitigation in lieu of offsite purchase, and no action.

(Notice: Availability of an Environmental Assessment and Receipt of an Application for a Section 10(a)(1)(B) Incidental Take Permit of the Endangered Species Act)

Dated: September 12, 1994.

Richard G. Gooch,

Acting Chief, Division of Endangered Species.

[FR Doc. 94–23076 Filed 9–16–94; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[AZ–020–04–4333–01]

Notice of Availability of the Draft Cyprus Tohono Corporation Proposed Mine Expansion Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Draft Cyprus Tohono Corporation Proposed Mine Expansion Draft Environmental Impact Statement, Phoenix District.

SUMMARY: In compliance with the Federal Land Policy and Management Act of 1976, section 102(2)(c) of the National Environmental Policy Act of 1969, and The United States Department of the Interior Secretarial Order No. 3087, Section 5, Amendment No. 1, The Bureau of Land Management (BLM) has prepared an Environmental Impact Statement for the Cyprus Tohono Corporation's proposed mine expansion on the Tohono O'odham Nation, Papago Indian Reservation. The proposed action (Alternate A) consists of the conversion from in situ to open pit mining operations at Cyprus, the creation of a new overburden storage site, and a new copper oxide ore heap leach pad. Cyprus proposes production of approximately one billion pounds of copper during the thirteen year life of the proposal. A description of existing facilities and a detailed proposed plan of operations is presented in the Mine Plan of Operations for Expanded Open Pit and Heap Leach Operations (Cyprus Casa Grande Corporation 1993). The project was developed in response to three underlying needs: mining lease compliance, continued industrial economic support for the Nation, and copper production.

Implementation of Alternative A would result in the disturbance of a total of approximately 1,660 acres, or approximately 0.06 percent of total Nation lands. Alternative A involves the development, operation, performance and maintenance of the following major project components: open pit mine expansion, overburden disposal area, heap leach pads and ponds, stormwater collection and recycling, processing facilities, access and service roads, support facilities, utilities, spill prevention, health and safety plans, and reclamation and closure. There would be increases in royalties and employment. Scholarships would be established. Each of the major project components re described in the main body of the Draft EIS.

Alternative B was developed to minimize potential impacts to biological and visual resources. Alternative B includes the same basic project components as Alternative A, however, some of the components would be moved south of an existing access road. Movement of the proposed project elements south of the existing mine access road serves to limit disturbance of natural drainages, reduce potential disturbance to bat colonies north of the site, and to provide a visual screen of existing mine plant site structures. Alternative B would disturb a total of approximately 1,850 acres.

DATES: The protest period will begin upon publication of this notice in the Federal Register and will run for 60 days after which public comments will be incorporated into a Final Document. These procedures can be found in the Code of Federal Regulations (43 CFR 1610.5–2).

SUPPLEMENTARY INFORMATION: A limited number of copies of the EIS are available upon request to the: Phoenix District Manager, Bureau of Land Management, 2015 West Deer Valley Road; Phoenix, Arizona 85027. There are also copies available for review at the above location.

Public meetings will be held to receive comments on the Draft Environmental Impact Statement. Location, dates, and times of these meetings will be announced in the local media.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Attn: Paul J. Buff, 2015 West Deer Valley Road, Phoenix, Arizona 85027 (602) 780–8090.

Dated: September 9, 1994.

G.L. Cheniae,

District Manager.

[FR Doc. 94–23077 Filed 9–16–94; 8:45 am]

BILLING CODE 4310–32–M

National Park Service

General Management Plan; National Park of American Samoa; Intent To Prepare an Environmental Impact Statement

SUMMARY: The National Park Service will prepare a General Management Plan/Environmental Impact Statement (GMP/EIS) for the National Park of American Samoa, Islands of Tutuila, Ta'u, and Ofu, Territory of American Samoa, and initiate the scoping process for this document. This notice is in accordance with 40 CFR 1501.7 and 40 CFR 1508.22, of the regulations of the President's Council on Environmental Quality for the National Environmental Policy Act of 1969, Public Law 91–190.

BACKGROUND: Authorized in October, 1988, the National Park of American Samoa is to be established when the Governor, acting on behalf of the village landowners, and the National Park Service have entered into a lease agreement. With the signing of the lease in September, 1993, the National Park Service is authorized to begin management and operation of the park. The general management plan will provide long-term guidance for preserving and protecting park resources, maintaining traditional Samoan customs and uses, providing access, developing appropriate visitor facilities, and dealing with other important issues.

Persons wishing to provide scoping comments on the plan and environmental statement or needing additional information should address such comments or questions to the Superintendent, National Park of American Samoa, Pago Pago, American Samoa 96799, or to the Park Planner, Pacific Area Office, National Park Service, 300 Ala Moana Blvd., Box 50165, Honolulu, HI 96850. Comments should be received no later than 60 days from the date of publication of this notice.

The responsible official is Stanley T. Albright, Regional Director, Western Region, National Park Service. The draft GMP/EIS is expected to be available for public review by the end of December, 1995, and the final GMP/EIS and Record of Decision completed by January, 1997.

Dated: August 25, 1994.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 94–23066 Filed 9–16–94; 8:45 am]

BILLING CODE 4310–70–P

Sudbury, Assabet and Concord Rivers Wild and Scenic Study; Massachusetts; Sudbury, Assabet and Concord Rivers Study Committee; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1 § 10), that there will be a meeting of the Sudbury, Assabet and Concord Rivers Study Committee on Thursday, October 6, 1994.

The Committee was established pursuant to Public Law 101–628. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Sudbury, Assabet and Concord River segments specified in Section 5(a)(110) of the Wild and Scenic Rivers Act. The Committee shall also advise the Secretary concerning management alternatives, should some or all of the river segments studied be found eligible for inclusion in the National Wild and Scenic Rivers System.

The meeting will be held at 7:30 p.m., Thursday, October 6, 1994, at the Concord Room, Concord Town House, Concord, MA. Directions: Concord Town House is located in the town center, opposite the small green and rotary at the intersection of Lexington Rd., Monument St., Lowell Rd., and Main St. From the east, take Rte. 2 west to the Cambridge Turnpike turn-off.

The Town House is 1.6 miles ahead on the right. From the south, take Rte. 126 north to Main St. Turn right and then follow rotary to the left. Town House is on the right, before Monument St. and the Colonial Inn.

The agenda is as follows:

1. Welcome and introductions, approval of minutes from 09/08/94 meeting
2. Brief questions and comments from public
3. Subcommittees Updates
   A. Water Resources Subcommittee
   B. Public Involvement Subcommittee
   C. River Conservation Subcommittee
4. Issues of local concern
5. Opportunity for public questions and comments
6. Other business—Next meeting dates and locations
7. Adjournment

Interested persons may make oral/written presentations to the Committee during the business meeting or file written statements. Further information concerning the meeting may be obtained from Cassie Thomas, Planner, National Park Service, 15 State Street, Boston, MA 02109 or call (617) 223–5014.

Dated: September 9, 1994.

John Guthrie,

Acting Regional Director.

[FR Doc. 94–23067 9–16–94; 8:45 am]

BILLING CODE 4310–70–M

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the South Dakota State Archaeological Research Center.

AGENCY: National Park Service

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of an inventory of human remains and associated funerary objects in the possession of the South Dakota State Archaeological Research Center, Rapid City South Dakota.

The detailed inventory and assessment of the human remains and associated funerary objects has been made by the State Archaeological Research Center (SARC) curatorial staff, contracted specialists in physical anthropology and archaeology, and representatives of the Cheyenne River Sioux Tribe, Lower Brule Sioux Tribe, Crow Creek Sioux Tribe, and Standing Rock Sioux Tribe.

The remains of an adult and a child were recovered in 1953 from the Cottonwood Site (39HU43), in Hughes County, South Dakota. Excavation data suggests the site was occupied by Dakota Sioux between A.D. 1867–1900. The Cottonwood Site is located adjacent to the Lower Brule Sioux Reservation. Based on the above mentioned information, officials of the SARC have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these human remains and the Lower Brule Sioux Tribe.

The remains of two individuals were recovered in 1961 from Sitting Crow Mounds (39BF225), a Woodland and Historic site in Buffalo County, South Dakota. Objects associated with the adult female and child—including rings, fragments of fabric and metal, shoes, buttons, a toy revolver, and the remnants of coffins—help date the two

burials to the Historic Period (post 1750). Craniometric measurements are consistent with those of Sioux populations. Sitting Crow Mounds are located adjacent to the Crow Creek (Sioux) Reservation. Based on the above mentioned information, officials of the SARC have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these human remains and the Crow Creek Sioux Tribe.

The remains of two individuals were recovered between 1966–1968 at Fort Manuel (39CO5), in Corson County, South Dakota. The site is multicomponent, representing Extended Coalescent, historic trading post, and historic Sioux occupations. The remains of an adult male appear to have been buried in a pit in the cellar following the 1813 abandonment of the fort. The weathered condition of these remains is indicative of a scaffold burial with secondary interment, a practice common among the Sioux. Osteological information indicates the child is associated with the Extended Coalescent component of the site. However, wood fragments associated with these remains may represent remnants of a historic period coffin. Fort Manuel is located adjacent to the Standing Rock Sioux Reservation. Based on the above mentioned information, officials of the SARC have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these human remains and the Standing Rock Sioux Tribe.

The remains of one individual were recovered in 1979 from the Three Horse Site (39DW35) in Dewey County, South Dakota. The site is multicomponent, representing Archaic and historic period occupations. The remains of the adult male were recovered from a disturbed area along a cutbank. Evaluation of the cranial morphology by K. Richard McWilliams suggests an Archaic or earlier temporal association for the human remains. Physical anthropologists from the University of Tennessee suggest the human remains are from a Sioux population. The Three Horse Site is located within the exterior boundary of the Cheyenne River (Sioux) Reservation. Based on the above mentioned information, officials of the SARC have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these human remains and the Cheyenne River Sioux Tribe.

On May 20, 1994, the above mentioned human remains and associated funerary objects were repatriated to Mr. Sebastian LeBeau on behalf of the Lower Brule Sioux Tribe, Crow Creek Sioux Tribe, Standing Rock Sioux Tribe, and Cheyenne River Sioux Tribe. Questions or concerns related to the repatriation of the human remains and associated funerary objects listed in this notice can be directed to Sebastian (Bronco) LeBeau, Cultural Preservation Officer, Cheyenne River Sioux Tribe, P.O. Box 590, Eagle Butte, South Dakota 57625, (605) 964–4155; Michael Jandreau, Chairman, Lower Brule Sioux Tribe, P.O. Box 187, Lower Brule, South Dakota 57548, (605)473–5561; Duane Big Eagle, Chairman, Crow Creek Sioux Tribe, P.O. Box 658 Fort Thompson, South Dakota 57339, (605) 245–2221; or Charles W. Murphy, Chairman, Standing Rock Sioux Tribe, Ft Yates, North Dakota 58538, (701) 854–7231.

Dated: September 6, 1994

Francis P. McManamon

Departmental Consulting Archeologist
Chief, Archeological Assistance Division

[FR Doc. 94–23068 Filed 9–16–94; 8:45 am]

BILLING CODE 4310–70–F

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–167 (Sub-No. 1136X)]

Consolidated Rail Corporation—Abandonment Exemption—Chester County, PA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Consolidated Rail Corporation of Chester Valley Running Track, an approximately 1.7-mile rail line in Chester County, PA, between milepost 17.5±, near Exton, and milepost 19.2±, near Ackworth, subject to trail use, public use, and standard labor protection conditions.

DATES: The exemption will be effective October 19, 1994 unless stayed or a statement of intent to file an offer of financial assistance (OFA) is filed. Statements of intent to file an OFA under 49 CFR 1152.27(c)(2) and requests for a notice of interim trail use/rail banking under 49 CFR 1152.29 must be filed by September 29, 1994, petitions to stay must be filed by October 4, 1994, requests for a public use condition under 49 CFR 1152.28 must be filed by October 11, 1994, and petitions to reopen must be filed by October 14, 1994.

ADDRESSES: An original and 10 copies of all pleadings, referring to Docket No. AB–167 (Sub-No. 1136X), must be filed with the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. In addition, a copy of all pleadings must be served on Robert S. Natalini, Consolidated Rail Corporation, 2001 Market Street, 16A, Philadelphia, PA 19101.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the decision, write to, call, or pick up in person from Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing-impaired is available through TDD services at: (202) 927–5721.]

Decided: September 8, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmons and Morgan.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–23086 Filed 9–16–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–55 (Sub-No. 380X)]

CSX Transportation, Inc.—Abandonment Exemption—in Allegheny County, PA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by CSX Transportation, Inc., of 1.47 miles of rail line extending between milepost 0.85 and milepost 2.32 in Pittsburgh, Allegheny County, PA, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on October 19, 1994. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by September 29, 1994; petitions to

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

stay must be filed by October 4, 1994; requests for a public use condition must be filed by October 11, 1994; and petitions to reopen must be filed by October 14, 1994.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 380X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and (2) Charles M. Rosenberger, Counsel for CSXT, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: September 7, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmons and Morgan.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–23087 Filed 9–16–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32570]

The Denver and Rio Grande Western Railroad Company—Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant approximately 64.94 miles of overhead trackage rights to The Denver and Rio Grande Western Railroad Company (DRGW). The trackage rights extend from former Chicago, Rock Island and Pacific Railroad Company milepost 88.84 in Topeka, KS, to UP milepost 3.3 in Kansas City, KS.[1] The trackage rights became effective on September 5, 1994.[2]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Gary A. Laakso, The Denver and Rio Grande Western Railroad Company, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: September 12, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–23213 Filed 9–16–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–8 (Sub-No. 29X)]

The Denver and Rio Grande Western Railroad Company—Discontinuance of Trackage Rights Exemption—in Dickinson, Morris, Lyon, Osage, Franklin, Miami and Johnson Counties, KS, and Jackson County, MO

The Denver and Rio Grande Western Railroad Company (DRGW) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuance of Trackage Rights* to discontinue its trackage rights over 173.25 miles of rail line owned by the Missouri Pacific Railroad Company (MP)[1] between milepost 278.39 at or near Kansas City, MO and milepost 451.64 at or near Herington, KS, in Dickinson, Morris, Lyon, Osage, Franklin, Miami and Johnson Counties, KS, and Jackson County, MO (The Line).[2]

DRGW's discontinuance of trackage rights will allow MP, owner of the The Line, to consummate abandonment of the portion of The Line pursuant to its filing in Docket No. AB–3 (Sub-No. 111X), *Missouri Pac. R. Co.—Aban.—Osage & Morris Count., KS*, 9 I.C.C.2d 1228 (1993).

MP has also sought to abandon another portion of The Line in *Missouri Pacific Railroad Company—Abandonment—in Miami, Franklin and Osage Counties, KS*, Docket No. AB–3 (Sub-No. 115X), (ICC served Aug. 11, 1994), instituting an investigation under the modified procedure.

DRGW has certified with respect to the trackage rights involved here that: (1) No local traffic has moved over the line for at least 2 years;

(2) any overhead traffic on the line can be rerouted;

(3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and

(4) the requirements at 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.[3]

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 19, 1994, unless stayed pending reconsideration. Petitions to stay must be filed by September 29, 1994. Petitions to reopen must be filed by October 11, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.[4]

A copy of any petition filed with the Commission should be sent to applicant's representative: Gary A. Laakso, General Attorney, Southern Pacific Lines, Southern Pacific Building, One Market Plaza, room 846, San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

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[1] DRGW plans to add the trackage rights to a future grant of trackage rights between Herington and Topeka, KS, to be obtained from its affiliate, the St. Louis Southwestern Railway Company. The combined new trackage rights will replace trackage rights DRGW is seeking to discontinue over a Missouri Pacific Railroad Company line between Herington and Kansas City, MO, in *The Denver and Rio Grande Western Railroad Company—Discontinuance of Service—In Dickinson, Morris, Lyon, Osage, Franklin, Miami, and Johnson Counties, KS and Jackson County, MO*, Docket No. AB–8 (Sub-No. 29X), filed August 30, 1994.

[2] The parties plan to consummate this transaction to correspond with the discontinuance effective date in Docket No. AB–8 (Sub-No. 29X).

[1] The trackage rights were granted in an agreement between MP and DRGW in 1982.

[2] Under 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Commission at least 50 days before the abandonment or discontinuance is to be consummated. The applicant, in its verified notice, indicated a proposed consummation date of October 18, 1994. Because the verified notice was not filed until August 30, 1994, consummation should not have been proposed to take place prior to October 19, 1994. Applicant's representative has confirmed that the correct consummation date is on or after October 19, 1994.

[3] No environmental or historical documentation is required here under 49 CFR 1105.6(b)(3).

[4] Because this is a discontinuance proceeding only, the routine provisions for trail use/rail banking or public use conditions provided for in abandonment proceedings are not appropriate here.

Decided: September 12, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–23214 Filed 9–16–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32572]

Great Western Railway Company of Iowa—Trackage Rights Exemption—CBEC Railway, Inc.

CBEC Railway, Inc. (CBEC), has agreed to grant local trackage rights to Great Western Railway Company of Iowa, L.L.C. (GWRI), extending from the eastern terminus of the line and yards of the Union Pacific Railroad Company, Inc., in Council Bluffs, IA, from a point at or near milepost 485.5 to a point at or near milepost 407.7, a distance of approximately 5 miles in Pottawattamie County, IA. The parties expected to consummate the transaction on or after September 6, 1994.[1]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Karl Morell, 1101 Pennsylvania Ave., NW., suite 1035, Washington, DC 20004.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: September 9, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–23215 Filed 9–16–94; 8:45 am]

BILLING CODE 7035–01–P

[1] CBEC had filed a notice of exemption under 49 CFR 1150.31 for the acquisition of this segment of rail line. *See CBEC Railway, Inc.—Acquisition and Operation Exemption—Great Western Railway Company of Iowa, Inc.*, Finance Docket No. 32453 (ICC served Mar. 18, 1994). GWRI states that the Trackage Rights Agreement was entered into on April 29, 1994, but it was only recently that CBEC acquired the involved line from GWRI. It states that as a condition of the Purchase Agreement, CBEC agreed to grant GWRI trackage rights over the line once the sale was consummated.

[Finance Docket No. 32420]

The Indiana & Ohio Rail Corp.—Continuance in Control Exemption—The Cincinnati Terminal Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343, et seq., the Indiana & Ohio Rail Corp.'s (IORC)[1] continuance in control of The Cincinnati Terminal Railway Co. (CTER), through ownership of all of CTER's capital stock. CTER is a class III common carrier that operates a 16.25-mile line of railroad and associated branch and connecting tracks known as the Oasis Line, located in Cincinnati, Fairfax, and Evendale, OH.

DATES: This exemption is effective on October 19, 1994. Petitions to stay must be filed by September 29, 1994 and petitions to reopen must be filed by October 11, 1994.

ADDRESSES: Send pleadings referring to Finance Docket No. 32420 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioner's representative: Robert L. Calhoun, Sullivan & Worcester, Suite 1000, 1025 Connecticut Avenue, NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Near its northern end, CTER's Oasis Line connects with the Indiana & Ohio Railway Company (IORY), a wholly owned subsidiary of IORC, and, at its northern end, with Conrail. From its northern end, the line runs in a loop south and west through Cincinnati, OH, where it connects with a line of the Norfolk & Western Railway Company (N&W). CTER entered into a track lease agreement with N&W.[2] As a result, CTER connects with another carrier, the Central Railroad Company of Indiana (CIND). The Indiana and Ohio Railroad Company (INOH), also controlled by IORC, has trackage rights over CIND.[3] Control of CTER by IORC will permit the coordination of the operations and services of INOH, IORY, and CTER. The combined INOH-CTER-IORY operation will provide a through connection to Conrail that will eliminate the need to rely on an intermediate switch.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721.]

Decided: September 7, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmons and Morgan.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–23085 Filed 9–16–94; 8:45 am]

BILLING CODE 7035–01–P

[1] IORC is a non-carrier that controls, with the Commission's approval, four other railroads.

[2] The Cincinnati Terminal Railway Co.—Lease Exemption—Norfolk & Western Railway Company, Finance Docket No. 32519 (ICC served Aug. 31, 1994).

[3] See The Indiana and Ohio Railroad Company, Inc.—Trackage Rights Exemption—The Central Railroad Company of Indiana, Finance Docket No. 32350 (ICC served Nov. 10, 1993).

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 94–67; Exemption Application No. D–9646, et al.]

Grant of Individual Exemptions; The Bally Manufacturing Corporation, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of

the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

The Bally Manufacturing Corporation, Bally's Employee Savings Trust for Administrative Employees, et al. (the Plans), Located in Chicago, IL

[Prohibited Transaction Exemption 94–67; Application Nos. D–9646 and D–9647]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to (1) the advance of funds (the Advances) to the master trust which was established to hold the assets of the Plans (the Master Trust) by Bally Manufacturing Corporation (the Employer), a party in interest with respect to the Plans and the Master Trust, and (2) the Master Trust's potential repayment of the Advances upon the receipt by the Master Trust of payments under two guaranteed investment contracts (the GICs) issued by Executive Life Insurance Company (Executive Life); provided the following conditions are satisfied:

(A) No interest or expenses are paid by the Plans in connection with the transaction;

(B) The Advances will be repaid only out of amounts paid to the Master Trust by Executive Life, its successors, or any other responsible third party; and

(C) Repayment of the Advances is waived with respect to the amount by which the Advances exceed GIC proceeds.

Comments

In the Notice of Proposed Exemption, the Department invited all interested persons to submit written comments and requests for a hearing on the exemption. All comments and requests for hearing were due by September 10, 1994. The Department received two written comments and there were no requests for a hearing. Both commentators were in favor of the exemption and urged the Department to allow the Employer to make the Advances so that participants could receive distribution of their Plan benefits.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 27, 1994 at 59 FR 38209.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Profit Sharing Plan for Employees of Lewis-Gale Clinic, Inc. (the Plan), Located in Salem, Virginia

[Prohibited Transaction Exemption 94–68; Exemption Application No. D–9654]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) of certain shares of stock (the Shares) from certain individually-directed accounts in the Plan (the Accounts) to Lewis-Gale Clinic, Inc. (the Clinic), a party in interest with respect to the Plan.

This exemption is conditioned on the following requirements: (1) the terms and conditions of the Sale are at least as favorable to the Accounts as those obtainable in an arm's length transaction with an unrelated party; (2) the Sale is a one-time cash transaction; (3) the Accounts are not required to pay any commissions, costs or other expenses in connection with the Sale; (4) the Sales price for the Shares is based upon their fair market value as determined by a qualified, independent appraiser; and (5) within ninety days of the publication in the **Federal Register** of the grant of this exemption, the Clinic files Forms 5330 with the Internal Revenue Service and pays all applicable excise taxes due with respect to past prohibited transactions.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 27, 1994, at 59 FR 38206.

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 14th day of September, 1994.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–23120 Filed 9–16–94; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–9178, et al.]

Proposed Exemptions; Banque Paribas (the Bank) and Paribas Asset Management, Inc. (the Manager; collectively the Applicants)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESS: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Banque Paribas (the Bank) and Paribas Asset Management, Inc., (the Manager; collectively, the Applicants), Located, respectively, in Paris, France and New York, New York

[Application Nos. D-9178 and D-9179]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the proposed guarantee by the Bank to an employee benefit plan that retains the Manager as investment manager for such plan (the Plan) of the value of the Plan's principal investment with the Manager, provided that each of the following conditions is satisfied: (1) the fiduciaries of the Plan who are responsible for the selection and retention of the Manager as investment manager for the Plan, and for the selection of the guarantee from the Bank, are independent of the Manager, the Bank, and their affiliates; (2) no separate fee or remuneration is payable by the Plan or any other person to the Manager, the Bank, or any of their affiliates for the guarantee; (3) the Plan is entitled to cancel the investment management agreement with the Manager, and/or the guarantee provided by the Bank, at any time upon reasonable notice; (4) the Agreement between each Plan and the Manager and the Bank will be amended to provide that, for purposes of enforcing the Bank's guarantee, the determination of the value of a Plan's assets under the Manager's investment management at any relevant time shall be made pursuant to objective standards determined jointly by the Manager and the Plan's custodian, which is the bank or other entity holding the assets of the Plan or other Plan fiduciary responsible for causing the Plan to enter into the Agreement; (5) however, if the Manager and the Plan's custodian are unable to agree as to the value of the Plan's account, they will jointly select a qualified appraiser to make this determination; if they are unable to agree on an appraiser, the Manager and the Plan's custodian will each select a qualified appraiser and the value will be determined by mutual agreement of such appraisers or, if they cannot agree, by a third qualified appraiser designated by the two appraisers, and all such appraisers will be independent of the Manager; and (6) the investment management agreement between each Plan and the Manager and the Bank will provide (a) that income from any lending from a Plan's account will be credited to the Plan's account and not to the Manager's account, and (b) that no lending of this type will occur under circumstances where the borrower is a party in interest or disqualified person with respect to the Plan unless the conditions of Prohibited Transaction Exemptions 81-6 (52 FR 18754, May 19, 1987) and 82-63 (47 FR 14084, April 6, 1982, as corrected by 47 FR 16437, April 16, 1982)] are satisfied.

For purposes of this proposed exemption, the term "affiliate" of another person means any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person, provided that the

Manager shall not be deemed an affiliate of another person solely because the Manager has investment management authority or discretion over the assets of the other person. For purposes of the foregoing, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual. Further, for purposes of this proposed exemption, a Plan fiduciary shall be deemed "independent" of a person only if: (1) the fiduciary is not an affiliate, as defined above, of such person; and (2) the fiduciary has no other relationship to or interest in such persons that might affect the exercise of such fiduciary's best judgment as a fiduciary.

Summary of Facts and Representations

1. The Bank is a bank organized under the laws of the Republic of France and is a subsidiary of Compagnie Financiere de Paribas, represented to be one of the world's leading banking and financial groups. The Bank, through its subsidiaries, branches and offices, operates in over 60 countries, including the United States, spanning the whole range of banking activities. The Bank's operations are structured in four principal groups: corporate banking, capital markets, corporate advisory services, and investment management. As of December 31, 1990, the Bank's consolidated assets totalled approximately FF 568 billion (US $111 billion), with consumer loans totalling approximately FF 176 billion (US $34 billion) and customer deposits totalling approximately FF 228 billion (US $44 billion).

2. The Manager, a corporation organized under the laws of the State of Delaware and an indirect wholly owned subsidiary of the Bank, is responsible for defining the Bank's overall investment objectives and managing its pooled investment products (including specialized country or regional funds, diversified growth and income funds, and fixed income funds). Worldwide, the Manager and the Bank's institutional management team had total assets under management of almost FF 55 billion (US $11 billion) at the 1990 year end. The Manager is a registered investment adviser under the Investment Advisers Act of 1940 (the Advisers Act) and, according to the Applicants, qualifies as an investment manager under section 3(38) of the Act.[1] The Manager's principal business activity in the United States is the provision of investment management services for various clients, including the trustees or other fiduciaries of plans governed by the Act. The Manager currently serves in such capacity with respect to five U.S.-based clients, including three Plans, involving approximately US $190 million in assets under management (including approximately US $85 million of Plan assets). The investment media in which the Manager will invest a Plan's assets is generally subject to specific investment guidelines and restrictions prescribed by the Plan fiduciaries, but may include fixed income instruments (such as bonds, mortgage-backed securities, Treasury bills, and commercial paper), options on fixed income securities, forward rate agreements, floating rate notes, and currency hedging instruments. According to the applicant fixed income related instruments are intended to be used as a hedge or as an alternative to bonds.

3. The Manager and the Bank have entered into investment management agreements with certain non-Plan clients which provide that the Bank will guarantee the value of the client's initial principal investment; if the client does not cancel the agreement before the first anniversary of its effective date and not over 50 percent of such investment has been withdrawn by that date. Mechanically, the Bank would contribute its own funds to the client's account with the Manager, for distribution to the client, in the event the client elected to cancel the agreement or to withdraw funds from the account at a time when the value of such account was less than the amount of the client's principal investment therein. Such agreements terminate after one year, subject to renewal by written agreement of the parties thereto.

4. The Manager and the Bank would like to offer a similar guarantee to the Manager's Plan clients. The parties to the investment management agreement (the Agreement) would be the Bank, the Manager, and the Plan client. Section 6.1 of the prototype Agreement provides that the Bank unconditionally guarantees the return to the client at the termination of the Agreement of an amount equal to the amount invested by the client (the Qualifying Deposit) under the Agreement (either initially or after the date of any renewal of the Agreement). Qualifying Deposit means any amount invested by the client not more than half of which is withdrawn before the first anniversary of the date of the Agreement (or, in the case of a renewal of the Agreement, not more than half of which is withdrawn before the first anniversary of the date of such renewal). However, pursuant to section 6.2 of the Agreement, the above mentioned guarantee (the Guarantee) does not apply if the client terminates the Agreement before such first anniversary. The Guarantee does apply, however, to any principal withdrawn by the client if (and after): (i) the credit rating assigned to the Bank's unsecured unsubordinated debt securities by either Standard and Poor's Corporation or Moody's Investors Service, Inc. is reduced below AA- or Aa3, respectively; or (ii) the Manager or the Bank notifies the client that the Agreement will terminate prior to its agreed upon term. There is no time period limiting the application of the Guarantee with respect to the circumstances described in (i) and (ii), above.

The applicant states that if a client were to deposit additional amounts under the Agreement after the date of the initial Qualifying Deposit but before the first anniversary of the date of the Agreement (or before the first anniversary of any renewal of the Agreement), such additional deposits would also be guaranteed by the Bank, but such additional deposits would be subject to the same one-year holding period requirement (measured from the date of such additional deposit) for the Guarantee to apply.

Section 6.1 of the Agreement further provides that if, at the termination of the Agreement, the client has not received an amount equal to its Qualifying Deposit, the Bank shall, upon written demand by the client, pay to the client the entire unpaid principal balance of such Qualifying Deposit. This section permits the client to withdraw up to half of the Qualifying Deposit at any time subject to two weeks advance written notice. However, if at the time of such partial withdrawal the net asset value of the portfolio is lower than the Qualifying Deposit, section 6.1 of the Agreement provides that the Guarantee shall be reduced by a proportion equal to the amount of such withdrawal divided by the net asset value of the portfolio at that time. If at the time of the withdrawal the net asset value of the portfolio is higher than the Qualifying Deposit, the Guarantee shall be reduced by a proportion equal to the amount of such withdrawal divided by the Qualifying Deposit.

The applicant has provided three examples illustrating how the Guarantee operates in the case of partial withdrawals when the net asset value of the portfolio has (1) decreased, (2) not changed, and (3) increased. All three examples assume a Qualifying Deposit of $20 million and a withdrawal of $10 million after the one-year period

[1] The Department expresses no opinion herein as to whether or not the Manager qualifies as an investment manager under section 3(38) of the Act.

mentioned above. In the first example, the net asset value of the Qualifying Deposit had fallen to $15 million at the withdrawal date, leaving only $5 million (in net asset value) after the withdrawal. In this example, the Guarantee would be reduced by 67% (i.e., $10 million withdrawn divided by $15 million pre-withdrawal net asset value at time of withdrawal). Therefore, although $5 million would be the total net asset value remaining in the client's account under the Agreement after the $10 million withdrawal, the Guarantee would apply to $6,666,667 of the Qualifying Deposit (i.e., 33% of the $20 million Qualifying Deposit).

In the second example, the net asset value of the Qualifying Deposit remained at $20 million at the withdrawal date, leaving $10 million (in net asset value) after the withdrawal. In this example, the Guarantee would be reduced by 50% (i.e., $10 million withdrawn divided by $20 million pre-withdrawal net asset value at time of withdrawal). Therefore, $10 million would be the total net asset value remaining in the client's account under the Agreement after the $10 million withdrawal, and the Guarantee would apply to $10 million of the Qualifying Deposit (i.e., 50% of the $20 million Qualifying Deposit).

In the third example, the net asset value of the Qualifying Deposit had risen to $25 million at the withdrawal date, leaving $15 million (in net asset value) after the withdrawal. In this example, the Guarantee would be reduced by 50% (i.e., $10 million withdrawn divided by the $20 million Qualifying Deposit). Thus, although $15 million would be the total net asset value remaining in the client's account under the Agreement after the $10 million withdrawal, the Guarantee would apply to $10 million of the Qualifying Deposit.

Income on the account would not be currently distributed to the client. Rather, income would be held in the account until termination of the Agreement and may become part of a new Qualifying Deposit upon renewal of the Agreement. As discussed above, it is anticipated most Agreements would have a renewable term of one year.

5. The applicant states that the investment management fee negotiated by the Manager with each of its clients does not change by reason of the Bank's Guarantee. The applicant represents that the Manager offers the client two management fees: a combined arrangement or a base fee only. The combined arrangement includes (a) a fixed fee of 0.30% per annum of the net asset value of the client's portfolio, payable quarterly in arrears based on the net asset value of the client's portfolio as of the end of the quarter (adjusted for additional withdrawals) and (b) a performance schedule fee equal to 25% of an amount equal to the aggregate net realized and unrealized appreciation in the value of the assets in the client's portfolio (including net investment income) in excess of a benchmark (the Benchmark) equal to the U.S. 3-month Treasury bill rate plus 100 basis points.[2]

The performance schedule fee is assessed and billed on the one-year anniversary of the date of the Agreement and at the end of each calendar quarter thereafter during the term of the Agreement, which may be renewed by written agreement of the parties. Each assessment of the performance fee is based on the performance of the client's portfolio over the 12 months ending on the last day of the period for which the fee is being paid. If the Agreement terminates at a time other than at the end of a calendar quarter, the performance fee for such quarter is payable upon termination, based on the performance of the client's portfolio over the 12 months ending on the termination date.

The Benchmark is calculated using the average of the U.S. 3-month Treasury bill rate on the first and last day of each quarter within the 12-month period in question. In calculating the performance fee, the basis for determining the amount of appreciation is the starting value of the assets in the client's portfolio at the beginning of the 12-month period. Every time a performance fee is paid out, the basis for assessing the performance is adjusted to reflect the net asset value after such fee payment. According to section 4.4 of the Agreement, any underperformance in a given quarter must be made up before any new performance fees are payable.

Section 4.4 of the Agreements currently in effect with non-Plan clients states that the valuation of the performance of the account will be provided by the Manager; however, the applicant represents that this section will be amended to provide that the valuation of the performance of the account will be jointly determined by the Manager and the Plan's custodian, which is the bank or other entity holding the assets of the Plan or other Plan fiduciary responsible for causing the Plan to enter into the Agreement. The applicant further represents that, if the Manager and the Plan's custodian are unable to agree as to the value of the Plan's account, they will jointly select a qualified appraiser to make this determination. If they are unable to agree on an appraiser, the Manager and the Plan's custodian will each select a qualified appraiser and the value will be determined by mutual agreement of such appraisers or, if they cannot agree, by a third qualified appraiser designated by the two appraisers. All such appraisers will be independent of the Manager.

Under the alternative arrangement, the client pays only a fixed fee equal to 0.40% per annum of the net asset value of the portfolio, payable quarterly in arrears based on the net asset value of the portfolio as of the end of the quarter, adjusted for additional withdrawals.

The applicant represents that the fees are disclosed in information materials furnished to the client, including the presentation flip book and the distributors' product overview letter. The applicant represents that the Manager's fees under the Agreement are competitive with the fees charged by competitors offering no guarantee.

6. As stated, the Manager and the Bank would like to offer the same Guarantee to the Manager's Plan clients which are not investing in pooled funds. The Plan fiduciaries would not be required to select the Guarantee, or if selected such fiduciaries would still retain the right to cancel the investment management agreement or the Guarantee feature at any time upon reasonable prior notice. A Plan will be permitted to cancel the investment management agreement with the Manager on 30 days' prior notice. In addition, a Plan will be permitted to cancel the Guarantee immediately upon notice of cancellation being given; that is, no period of advance notice will be required for cancellation of the Guarantee. No separate fee or remuneration would be paid by the Plan or any other person to the Manager, the Bank, or any of their affiliates for the Guarantee. The same negotiated

[2] The applicant represents that the performance schedule fee component of the combined arrangement will be substantially the same in all material respects as the performance fee arrangement described in advisory opinion letter 86-21A issued by the Department on August 29, 1986. That letter concerns the payment of incentive compensation to Batterymarch Financial Management by employee benefit plans.

The Department expressed its view that, based on the representations contained in the Batterymarch submissions, the payment of an incentive fee to Batterymarch pursuant to the arrangement described therein would not, in itself, constitute violations of sections 406(b)(1) or 406(b)(2) of the Act. The Department noted, however, that, because violations of sections 406(b)(1) and 406(b)(2) could occur in the course of the provision of services by Batterymarch, the Department was not prepared to rule that the described arrangement, in operation, would not violate those sections. In any event, the relief provided by this exemption does not extend to the receipt of fees by the Manager pursuant to the above performance schedule.

investment management fees would be charged by the Manager whether or not the Plan fiduciaries accept the Bank's Guarantee.

For purposes of determining when the Guarantee would be enforced, and in what amount, records will be kept by both the Manager and the Plan's custodian. The applicant represents that the Plan's custodian has no relationship to the Bank, the Manager, and its affiliates. The records of these two parties will be reconciled monthly. The applicant represents that in determining the value of the Plan's account, the value of a security will initially be determined by the Plan's custodian. The value will then be checked by the Manager using the following sources depending on the sector and the markets in which the security is trading: the closing price shown on the Reuters and/or Bloomberg screens; or if the security is not so displayed, mid-market prices obtained from at least two brokers with these prices then being averaged. If the value as so determined by the Manager is not significantly different from the value determined by the Plan's custodian, the latter value will be used. If there is a significant difference, the Manager will consult with the Plan's custodian in order to reach a mutually agreeable valuation. Thus, the final value of the Plan's account is determined jointly by the Manager and the Plan's custodian. However, it is represented that, if the Manager and the Plan's custodian are unable to agree as to the value of the Plan's account, they will jointly select a qualified appraiser to make this determination. If they are unable to agree on an appraiser, the Manager and the Plan's custodian will each select a qualified appraiser and the value will be determined by mutual agreement of such appraisers or, if they cannot agree, by a third qualified appraiser designated by the two appraisers. All such appraisers will be independent of the Manager.

7. Section 7 of the Agreement currently in effect with non-Plan clients permits the Manager to lend the securities held in the portfolio and to receive income from this process for its own account. However, this section also provides that any such lending by the Manager shall be entirely at the Manager's own risk and that the Manager shall indemnify the client for any loss sustained by the portfolio as a result of such activities. The applicant represents that this section of the Agreement will be amended to provide (a) that income from any such lending from a Plan's account will be credited to the Plan's account and not to the Manager's account, and (b) that no lending of this type will occur under circumstances where the borrower is a party in interest or disqualified person with respect to the Plan unless the conditions of Prohibited Transaction Exemptions 81–6 (52 FR 18754, May 19, 1987) and 82–63 (47 FR 14084, April 6, 1982, as corrected by 47 FR 16437, April 16, 1982) are satisfied.

8. The Applicants assert that by entering into an arrangement with the Manager and the Bank containing the proposed Guarantee, a Plan would receive protection against the risk of any loss in the value of its investment, provided by the proposed Guarantee, while also enjoying the benefit of potential income and gains realized by the Manager's individually tailored, active management of the Plan assets covered by the investment management agreement. They represent that these advantages are substantially similar to the benefits that may be achieved by so-called "managed guaranteed investment contracts" and similar investment products currently offered by certain insurance companies and banks. The Applicants state that since the terms and conditions of the investment management services provided by the Manager to its clients are subject to regulation by the Securities and Exchange Commission under the Advisers Act, and since the Bank must account for the Guarantee on its books and records in the same manner as any other Guarantee issued in the course of its banking business subject to the regulation of the French banking authorities (as well as the regulation of banking authorities in other countries, including the United States, in which the Bank maintains banking operations through its subsidiaries, branches, and offices), substantial regulatory oversight exists to ensure protection of the rights of Plans and their participants and beneficiaries with respect to the Guarantee.

By letter dated March 23, 1992, Jean-Pierre Mattout, Head of the Bank's Legal Department, stated his opinion that the Guarantee constitutes a valid and legally binding obligation of the Bank. The applicant points out that as the Bank has a branch doing business in the United States, the Bank is subject to the jurisdiction of the courts of the United States and a Plan could bring an action against the Bank in the courts of the United States to enforce the Guarantee. By letter dated September 15, 1993, the attorney representing the applicant with respect to the exemption application, explains that the Guarantee, a contract right created pursuant to the Agreement, would be a client Plan asset. He states that the Bank is subject to the jurisdiction of the courts of the United States and that a plan could bring an action against the Bank in the district courts of the United States to enforce the Guarantee. He expresses the opinion that for these reasons, the indicia of ownership of this contract right (the Guarantee) would be maintained within the jurisdiction of the district courts of the United States, consistent with the requirements of 29 CFR 2550.404b–1.[3]

9. Although the Applicants anticipate that the proposed Guarantee would be provided principally to plans sponsored by major corporations, generally with assets of at least US $200 million for each such plan, the Bank and the Manager wish to be able to offer the proposed Guarantee to any plan investing its assets with the Manager (but not investing in pooled funds) pursuant to an investment management agreement providing for such Guarantee, but only if the plan fiduciaries responsible for making the decisions (1) to select and retain the Manager as investment Manager, and (2) to select the Guarantee, are independent of the Bank, the Manager, and their affiliates. The Applicants represent that they do not presently know the identity of any plan that may select the Manager as investment manager and thereby may receive the Guarantee from the Bank under the applicable investment management agreement. The Applicants will bear all costs in connection with the filing of this exemption application.

10. In summary, the Applicants represent that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because: (a) the proposed transaction will enable a Plan to receive protection against the risk of any loss in the value of its investment in the Portfolio while also enjoying the benefit of potential income and gains realized by the Manager's individually tailored, active management of the Plan assets covered by the Agreement; (b) fiduciaries of the Plan who are independent of the Manager, the Bank, and their affiliates are responsible for the selection and retention of the Manager as investment manager for the Plan, and for the decision to acquire the Guarantee from the Bank; (c) no separate fee or remuneration is payable by the Plan or any other person to the Manager, the Bank, or any of their affiliates for the

[3] 29 CFR 2550.404b–1 provides, in pertinent part that no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States, unless specified conditions are satisfied. The Department is expressing no opinion herein as to whether or not the Agreement complies with the requirements of this section of the regulations.

Guarantee; (d) the Plan is entitled to cancel the investment management agreement with the Manager, and/or the Guarantee provided by the Bank, at any time upon reasonable notice; and (e) the determination of the value of a Plan's assets under the Manager's investment management at any relevant time shall be made pursuant to objective standards jointly by the Manager and the Plan's custodian; however, if the Manager and the Plan's custodian are unable to agree as to the value of the Plan's account, they will jointly select a qualified appraiser to make this determination; if they are unable to agree on an appraiser, the Manager and the Plan's custodian will each select a qualified appraiser and the value will be determined by mutual agreement of such appraisers or, if they cannot agree, by a third qualified appraiser designated by the two appraisers, and all such appraisers will be independent of the Manager.

NOTICE TO INTERESTED PERSONS: Since the identities of Plans that might select the Manager as investment manager, and thereby receive the proposed Guarantee pursuant to the Agreement, are presently unknown, the only practicable means of notifying potential interested persons is the publication of this notice of proposed exemption in the **Federal Register** and presentation of the notice to plan fiduciaries who enter into the investment management agreement. However, the Manager represents that notice of the proposed exemption will be furnished by first class mail to all known prospective plan clients.

FOR FURTHER INFORMATION CONTACT: Louis Campagna of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

L.H. Chapman Investment Company, Pension Plan (the Plan), Located in Columbus, Ohio

[Exemption Application No. D–9676]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the purchase (the Purchase) by Margaret Chapman, Loyal Chapman, and Lou Chapman Koester's individually-directed accounts (the Accounts) in the Plan from Indianapolis Life Insurance Company and Columbus Mutual Life Insurance Company of certain undivided interests (the Interests) in certain promissory notes (the Notes) of which the obligor is L.H. Chapman Investment Company, a party in interest with respect to the Plan.

This proposed exemption is conditioned on the following requirements: (1) the terms of the Purchase are at least as favorable to the Accounts as those obtainable in an arm's-length transaction with an unrelated party; (2) the Purchase price is equal to the Accounts' pro rata share of the aggregate outstanding principal balances of the Notes on the day of the Purchase; (3) the Purchase occurs only if such outstanding principal balances are not greater than the fair market values of the Interests on the day of the Purchase as determined by a qualified, independent appraiser; (4) the Purchase does not involve more than twenty-five percent of the assets in each of the Accounts; and (5) the Accounts are not required to pay any fees, commissions or expenses in connection with the Purchase.

Summary of Facts and Representations

1. The Plan is a money purchase pension plan with three participants and total assets of $1,647,147 as of August 31, 1993. The Plan permits each participant to direct the investments of his or her account. The three participants had the following account balances as of August 31, 1993:

Account	Balance
Margaret Chapman (Mrs. Chapman)	$1,024,482
Loyal Chapman (Mr. Chapman)	502,225
Lou Chapman Koester (Mrs. Koester)	120,440
Total	1,647,147

The trustee of the Plan is Loyal Chapman, who is also the president of L.H. Chapman Investment Company (the Employer) and its sole shareholder. The sponsor of the Plan is the Employer which is an Ohio corporation engaged in the jewelry business.

2. The Interests are undivided interests in two promissory notes (the Notes) which consist of a $400,000 promissory note made payable to Indianapolis Life Insurance Company (the Indianapolis Note) and an $850,000 promissory note made payable to Columbus Mutual Life Insurance Company (the Columbus Note). The Notes ultimately resulted from the Employer's acquisition in 1974 of 5.7 acres of real property in Washington Court House, Ohio and the subsequent construction of a shopping center on the property (the Shopping Center).

3. The Notes, dated January 10, 1974, are twenty-five year promissory notes with interest accruing at a rate of 8-7/8 percent per annum. The Notes are secured by a first deed of trust on the Shopping Center which was valued at $2,200,000 as of March 1, 1994. The terms of the Notes provide that the Employer has the right to prepay the entire indebtedness in full with a prepayment premium required only if the prepayment of the Notes is made in years eleven through twenty of the twenty-five year term. The Employer represents that, as of February 1, 1994, the Notes were twenty-one years old and, therefore, can be purchased by the Employer, without paying a premium, for their outstanding principal balances. As of March 29, 1994, the outstanding principal balance of the Indianapolis Note was $152,238 and the outstanding principal balance of the Columbus Note was $323,515. Prior to the Purchase, the Employer proposes to make a $63,966 payment towards the Indianapolis Note, thereby reducing its outstanding principal balance to $88,272 and the total outstanding principal balances of the Notes to $411,787.

Mrs. and Mr. Chapman and Mrs. Koester (the Applicants) propose to have the Employer, acting as agent for the Accounts, purchase the Interests for the Accounts for their outstanding principal balances on the date of the Purchase provided that the outstanding principal balances of the Notes are not greater than the aggregate fair market values of the Interests. The Accounts will purchase the Interests based upon the proportion of their respective accounts relative to the total assets in the Plan. Accordingly, the Accounts will purchase the Notes in the following proportions:

Account	Indianapolis note (percent)	Columbia note (percent)
Mrs. Chapman	62.20	62.20
Mr. Chapman	30.49	30.49
Mrs. Koester	7.31	7.31
Total	100	100

Accordingly, the Applicants request an administrative exemption from the Department to permit the Purchase under the terms and conditions described herein.

4. The Employer obtained an appraisal of the Interests dated March 29, 1994 from John R. Garvin, MAI-GRE

of Continental Appraisal Company of Columbus, Ohio. Mr. Garvin represents that both he and Continental Appraisal are independent of and unrelated to the Applicants and the Employer, although he has provided some consulting services for Mr. Chapman. Mr. Garvin states that, on average in the past five years, he has derived less than one percent of his annual income from the Employer and Mr. Chapman.

Mr. Garvin placed the fair market value of the Notes at $419,948. Such amount takes into consideration the $63,966 payment that will be made on the Indianapolis Note by the Employer. In assigning fair market values to the Interests based upon the value of the Notes, Mr. Garvin discounted the two minority interests (Mr. Chapman and Mrs. Koester's interests) by five percent to reflect their lack of liquidity. Mr. Garvin represents that because the majority interest (Mrs. Chapman's interest) could liquidate the investment at any time without the consent of the minority interests, there is no basis for any such discount with respect to the majority interest. The fair market values of the Interests, as of March 29, 1994, are as follows:

	FMV of interest	FMV after discount	Percent	Amount of outstanding balance
Mrs. Chapman	$261,197	$261,197	62.20%	$256,132
Mr. Chapman	128,045	121,643	30.49	125,553
Mrs. Koester	30,706	29,171	7.31	30,102
Totals	419,948	412,011	100.00	411,787

Accordingly, because the outstanding balance of the Notes are less than the fair market values of the Interests, the Accounts will purchase the Interests for their pro rata share of the outstanding balance.

5. The Applicants represent that the Purchase is in the best interests of the participants because it offers the Accounts the opportunity to purchase the Interests at less than their fair market values. Also, the Purchase will allow the Accounts to enhance their current rate of return without additional risk. The Applicants represent that the Purchase will not involve more than twenty-five percent of the assets in each of the Accounts. The Accounts are not required to pay any fees, commissions or expenses in connection with the Purchase.

6. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) the terms of the Purchase will be at least as favorable to the Accounts as those obtainable in an arm's-length transaction with an unrelated party; (b) the Purchase price will be equal to the outstanding principal balances of the Notes on the day of the Purchase; (c) the Purchase will occur only if such outstanding principal balances are not greater than the aggregate fair market values of the Interests on the day of the Purchase as determined by a qualified, independent appraiser; (d) the Purchase will not involve more than twenty-five percent of the assets in each of the Accounts; and (e) the Accounts will not be required to pay any fees, commissions or expenses in connection with the Purchase.

Notice to Interested Persons

Because the only Plan assets involved in the proposed transaction are those in Mrs. Chapman, Mr. Chapman & Mrs. Koester's Accounts and they are the only participants affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due thirty days after the date of publication of this notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219-8971. (This is not a toll-free number.)

AT&T Corporation (AT&T), and AT&T Investment Corporation (ATTIMCO), Located in New York, New York

[Application Nos. D–9716 and D–9717]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 F.R. 32836, 32847, August 10, 1990).

Part I—Exemption for Payment of Certain Fees to Asset Managers

The restrictions of section 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to the payment of Performance Fees by an AT&T Investment Fund to an Asset Manager in exchange for real estate management or advisory services rendered pursuant to an Agreement, provided that the conditions set forth in Parts II and III are satisfied.

Part II—General Conditions

(a) The Asset Manager is not an affiliate of AT&T and the terms of any Performance Fee are approved in writing by AT&T.

(b) The terms of any Performance Fee shall be at least as favorable to the AT&T Investment Fund as those obtainable in arm's-length transactions between unrelated parties.

(c) No AT&T Trust shall allocate, in the aggregate, more than twenty percent of its total assets to Arrangements which are the subject of this exemption, determined at the time any such Arrangement is established and at the time of any subsequent allocation of additional assets (including the reinvestment of assets) to such an Arrangement. The foregoing limitation shall not apply to an AT&T Plan Assets Entity. However, that percentage of the Assets of an AT&T Plan Assets Entity which is deemed to be "plan assets" of an AT&T Trust invested therein shall be treated as assets of such AT&T Trust for the purpose of applying the foregoing limitation to the AT&T Trust.

(d) AT&T shall receive the following written information with respect to assets subject to this exemption (Assets):

(1) annual audited financial statements prepared by independent certified public accountants approved by AT&T;

(2) quarterly and annual reports prepared by the Asset Manager relating to the overall financial position of the Assets (Each such report shall include a statement regarding the amount of fees paid to the Asset Manager during the period covered by such report); and

(3) annual reports indicating the fair market value of the Assets determined

on the basis of the most recently available Independent Valuations.

(e) The total fees paid to an Asset Manager shall constitute no more than reasonable compensation.

(f) The Performance Fee shall be payable after Net Proceeds with respect to the Assets exceed the Threshold Amount. The Threshold Amount and the amount of the Performance Fee, expressed as a percentage (or percentages) of the Net Proceeds in excess of the Threshold Amount (or Threshold Amounts), shall be established by the Agreement. The Threshold Amount for any Performance Fee shall include at least a minimum rate of return to the AT&T Investment Fund, as described in Part III, Section (q).

(g) The provisions of this paragraph (g) shall apply only where an Asset Manager has discretion to sell Assets without prior approval of AT&T. For any sale of an Asset which gives rise to the payment of a Performance Fee to an Asset Manager prior to the Termination Date, the sales price of the Asset shall be at least equal to a Target Amount in order for the Asset Manager to sell the Asset and receive its Performance Fee without further approval. If the proposed sales price of the Asset is less than the applicable Target Amount, the proposed sale shall be disclosed to and subject to the approval of AT&T, in which event the Asset Manager shall be entitled to sell the Asset and receive its Performance Fee. If the proposed sales price is less than the applicable Target Amount and AT&T's approval is not obtained, the Asset Manager shall retain the authority to sell the Asset, provided that the Performance Fee that would have been payable to the Asset Manager by reason of the sale of the Asset shall be paid only at the termination of the Arrangement.

(h) In the event of termination of the Arrangement upon its Termination Date, the Asset Manager shall be entitled to receive a Performance Fee payable on the Termination Date. The amount of the Performance Fee upon termination shall be determined by assuming a sale for cash of the remaining Assets at their fair market value (determined on the basis of Independent Valuations) and no reinvestment of such cash in Assets subject to the Arrangement.

(i) In the event of the removal or resignation of an Asset Manager prior to the Termination Date, the Asset Manager shall be entitled to receive a Performance Fee payable on the Termination Date pursuant to this paragraph (i). The Performance Fee shall be calculated on a preliminary basis at the time of such removal or resignation by assuming a sale for cash of the remaining Assets at their fair market value (determined on the basis of Independent Valuations) and no reinvestment of such cash in Assets subject to the Arrangements. As of the Termination Date, the amount so determined on a preliminary basis shall be multiplied by a fraction, the numerator of which is the sum of (1) the actual sales prices received by the AT&T Investment Fund on disposition of all Assets sold after the date of the Asset Manager's removal or resignation and prior to the Termination Date, and (2) in the case of Assets which have not been sold prior to the Termination Date, the value of the Assets as of the Termination Date (determined on the basis of Independent Valuations), and the denominator of which is the aggregate value of the Assets which was used in connection with the preliminary determination of the Performance Fee at the time of removal or resignation, provided that this fraction shall never exceed 1.0. The resulting amount shall be the Performance Fee payable to the Asset Manager upon the Termination Date.

(j) AT&T shall maintain or cause to be maintained with respect to the Assets, for a period of six years, the records necessary to enable the persons described in paragraph (k) of this Part II to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of AT&T, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest, other than AT&T, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975 (a) and (b) of the Code if the records are not maintained or are not available for examination as required by Part III, Section (k) below.

(k) Notwithstanding any provisions of Section 504(a)(2) and 504(b) of the Act, the records referred to in Section (j) of this Part II shall be unconditionally available at their customary location for examination during normal business hours by:

(1) any duly authorized employee or representative of the Department or the Internal Revenue Service;

(2) any contributing employer to any employee benefit plan the assets of which are held in the AT&T Investment Fund which has entered into the Arrangement or any duly authorized employee or representative of such employer;

(3) any participant or beneficiary of any employee benefit plan the assets of which are held in the AT&T Investment Fund or any duly authorized representative of such participant or beneficiary; and

(4) nothing in this paragraph (k) shall authorize any of the persons described in subsections (2) and (3) to examine any trade secrets of AT&T or information which is privileged or confidential.

Part III—Definitions

(a) An "affiliate" of a person means:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative of, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "Agreement" means the investment management, trust or other agreement entered into between an Asset Manager and AT&T for the provision of real estate management or advisory services.

(c) The term "Arrangement" means a fee arrangement entered into between AT&T and an Asset Manager pursuant to an Agreement providing for the payment of Performance Fees to the Asset Manager by an AT&T Investment Fund in exchange for real estate management or advisory services.

(d) The term "Asset Manager" means any person or entity providing real estate management or advisory services to an AT&T Investment Fund.

(e) The term "Assets" means assets of an AT&T Investment Fund which are the subject of an Arrangement with an Asset Manager.

(f) The term "AT&T" means AT&T Corporation, AT&T Investment Management Corporation and/or any Subsidiary.

(g) The term "AT&T Investment Fund" means an AT&T Trust or an AT&T Plan Assets Entity.

(h) The term "AT&T Plan Assets Entity" means any group trust, partnership or other entity (including without limitation the Telephone Real Estate Equity Trust), the assets of which are deemed to be "plan assets" by reason of the application of 29 CFR 2510.3–101, but only if (1) fifty percent or more of the interests in such entity are held by one or more AT&T Trusts, and (2) AT&T is the named fiduciary or manager of the assets of such entity.

(i) The term "AT&T Trust" means the AT&T Master Pension Trust or any other trust (other than an AT&T Plan Assets

Entity), one hundred percent of the assets of which are assets of employee benefit plans maintained by AT&T.

(j) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(k) The term "Independent Valuations" means valuations based on independent and objective third party sources acceptable to AT&T (including without limitation NASDAQ, newspapers, or other general publications, or brokers which are independent of the Asset Manager and its affiliates), or, if such sources are not available with respect to a particular asset or at the option of AT&T, valuations conducted by an appraiser independent of the Asset Manager and its affiliates which has been approved by AT&T; provided, however, that, solely for purposes of the reports described in Part II, Section (d)(3) above, no such appraisal will be required with respect to any Asset if AT&T determines, in its sole discretion, that such an appraisal is unnecessary.

(l) The term "Net Proceeds" means, with respect to an Arrangement, the aggregate amount of cash and other assets (valued at fair market value as determined on the basis of Independent Valuations) which cease to be Assets which are subject to such Arrangement, in accordance with the terms of the Agreement establishing such Arrangement.

(m) The term "Performance Fee" means a fee which equals a pre-specified percentage (or several pre-specified percentages) of all Net Proceeds in excess of the Threshold Amount (or several Threshold Amounts), subject to such limitations, if any, as AT&T may approve or impose.

(n) The term "Subsidiary" means a corporation, partnership, or other entity of which (or in which) fifty percent or more of

(1) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of such corporation,

(2) the capital interest or profits interest of such partnership, or

(3) the beneficial interest of such other entity,

is owned directly or indirectly by AT&T Corporation or AT&T Investment Management Corporation.

(o) The term "Target Amount" means a value assigned to each Asset either (1) at the time the Asset becomes subject to the Arrangement, by mutual agreement between the Asset Manager and AT&T, or (2) pursuant to an objective formula approved by the Asset Manager and AT&T at the time the Arrangement is established. However, in no event will the value be less than the value of the Asset at the time the Asset becomes subject to the Arrangement.

(p) The term "Termination Date" means the date, established in the Agreement, on which the Arrangement will terminate by reason of the passage of time, as the same may be amended from time to time with the approval of AT&T.

(q) The term "Threshold Amount" means with respect to any Arrangement an amount which equals one hundred percent of the AT&T Investment Fund's capital invested in the Assets plus a pre-specified annual compounded cumulative rate or rates of return, each of which is at least a minimum rate of return determined as follows:

(1) A non-fixed rate which is a least equal to the rate of change in the consumer price index (CPI) during the period from the time the Assets become subject to the Arrangement until Net Proceeds equal or exceed the applicable Threshold Amount; or

(2) a fixed rate which is at least equal to the average rate of change in the CPI over some period of time specified in the Agreement, which shall not exceed ten years.

EFFECTIVE DATE: This exemption, if granted, will be effective as of the date this notice of proposed exemption is published in the **Federal Register**.

Summary of Facts and Representations

1. AT&T is a New York corporation which provides a wide variety of national and international telecommunications services. ATTIMCO is a wholly-owned subsidiary of AT&T which performs investment management functions. ATTIMCO is a registered investment adviser under the Investment Advisers Act of 1940, as amended. AT&T is the sponsor of the AT&T Master Pension Trust (AT&T MPT), a qualified trust holding assets of certain employee benefit plans maintained by AT&T. The bulk of the real estate assets of the AT&T MPT is held through the Telephone Real Estate Equity Trust (TREET), a group trust established in connection with AT&T's divestiture in 1984 of the regional telephone holding companies, including BellSouth Corporation (BellSouth). The beneficial interests in TREET currently are held by the AT&T MPT and the BellSouth Master Pension Trust, a qualified trust holding the assets of employee benefit plans maintained by BellSouth. As of January 1, 1994, the Assets of the AT&T MPT (including its interest in TREET) exceeded $38 billion.

2. AT&T is the named fiduciary of both the AT&T MPT and TREET with the power to manage and control the assets of such trusts and to appoint investment managers of such assets. In order to facilitate investment of these and other such funds in potentially beneficial transactions and to encourage asset managers to maximize the value of assets under management, AT&T seeks the flexibility to enter into arrangements described below (the Arrangements) involving the payment of performance fees to independent asset managers, pursuant to formal agreements with current and future asset managers (the Agreements). AT&T is requesting an exemption to permit its payment of performance fees to asset managers for services rendered to the funds pursuant to Arrangements established by the Agreements, subject to the conditions in the proposed exemption, as described herein.

3. The proposed exemption will be available for Arrangements involving any AT&T Investment Fund (collectively, the Funds), a term which is defined as (1) the AT&T MPT or any other trust of which one hundred percent of the assets are assets of employee benefit plans maintained by AT&T, and (2) any group trust, partnership or other entity (including without limitation the Telephone Real Estate Equity Trust), the assets of which are deemed to be "plan assets" by reason of the application of 29 C.F.R. 2510.3–101, but only if (1) fifty percent or more of the interests in such entity are held by one or more AT&T Trusts, and (2) AT&T is the named fiduciary or manager of the assets of such entity. Under the Arrangements proposed, an asset manager would provide, or continue to provide, real estate management or advisory services to one or more Funds. Depending on the terms of the particular Agreement, an asset manager may have complete discretion with respect to assets of the Fund allocated to its account, including discretion to identify appropriate investments, make investment decisions, and manage and dispose of investments, or may be limited to making investment recommendations subject to the ultimate approval of AT&T. Alternatively, the asset manager may be given limited discretion with respect to some, but not all, aspects of the management of the assets allocated to its account. For example, the asset manager may have discretion with respect to all aspects of managing such assets except for specific major decisions such as acquisition and disposition.

4. The applicants represent that under the Agreements, assets of the Funds will be managed with the investment objective of obtaining current income and/or capital appreciation, primarily through investment directly or indirectly, in real estate and interests in real estate, including without limitation fee simple interests, interests in partnerships and joint ventures having an interest in real property, mortgages, options to purchase real estate, leaseholds, leasebacks, and investments in real estate funds, real estate investment trusts or other entities with assets which are invested, directly or indirectly, primarily in real estate. Assets potentially to be subject to the Arrangements include the following: (a) investments selected or recommended by an asset manager after an Agreement is executed, in accordance with investment guidelines established by the Agreement; (b) pre-identified investments which are particular properties which have been identified by the asset manager for investment (or recommended for investment) prior to the execution of the Agreement; (c) pre-existing assets which are already held by a Fund prior to the execution of the Agreement; and (d) combinations of the foregoing.

5. As proposed by the applicant, the performance fee payable to an asset manager under an Agreement (the Performance Fee) is a fee payable after net proceeds (Net Proceeds) from the assets under management pursuant to the Agreement exceed a certain amount (the Threshold Amount).[4] Net Proceeds, with respect to an Arrangement, are the aggregate amount of cash and other assets (valued at fair market value on the basis of independent valuations[5]) which cease to be assets subject to the Arrangement. Each Agreement establishing an Arrangement will specifically identify the assets to be subject to the Arrangement, and the basis upon which income and earnings on such assets will cease, or continue, to be subject to the Arrangement. For example, the applicant represents that an Agreement might provide that the assets initially allocated to the Arrangement plus all earnings and proceeds thereon will be reinvested and remain subject to the Arrangement until the Termination Date, whereupon all such assets will cease to be subject to the Arrangement. In such case, there will be no Net Proceeds during the term of the Arrangement, and therefore no Performance Fee would be payable until the Termination Date. Alternatively, the applicant represents that an Agreement might provide that all net income and other proceeds generated by the assets initially allocated to the Arrangement will cease to be subject to the Arrangement and will thereby constitute Net Proceeds. In such case, Net Proceeds will be generated as and when the initial assets generate net income or other proceeds, and a Performance Fee would be payable once the amount of these Net Proceeds exceed the Threshold Amount. The Threshold Amount is defined as an amount equal to one hundred percent of the Fund's capital investment plus a pre-specified annual compounded cumulative rate or rates of return each of which is at least a minimum rate of return as determined by a formula based on the consumer price index, as required in Part III, Sections (q) (1) and (2) of the proposed exemption. The proposed exemption provides that the Performance Fee is payable (a) after Net Proceeds exceed the Threshold Amount, and/or (b) on the Agreement's termination date (the Termination Date, defined as the date on which the Arrangement will terminate by reason of the passage of time, as the same may be amended from time to time with the approval of AT&T), either upon termination of the Arrangement or in the event of the prior removal or resignation of an asset manager. The Performance Fee will be equal to a pre-specified percentage, or several pre-specified percentages, of all Net Proceeds in excess of the Threshold Amount, or Threshold Amounts, subject to such limitations as AT&T may impose. In this regard, AT&T represents that there is a possibility that several Threshold Amounts may be established with different percentages being utilized to determine the Performance Fee, depending upon which Threshold Amount has been exceeded. AT&T states that this structure will allow AT&T to negotiate an arrangement on behalf of a Fund pursuant to which the amount of the Performance Fee will increase as the level of investment performance increases. AT&T states that, as an example, AT&T could negotiate a Performance Fee whereby an asset manager would receive ten percent of all Net Proceeds in excess of an initial Threshold Amount (e.g., all invested capital plus an eight percent annual return), and twenty percent of all Net Proceeds once a second Threshold Amount (e.g., all invested capital plus a twelve percent annual return) has been achieved. Both the annual rate(s) of return used in determining the Threshold Amount(s) and the percentage(s) used to determine the amount of the Performance Fee will be negotiated between AT&T and the asset manager prior to the application of any Arrangement to assets under management of the asset manager.

With respect to the determination of the Threshold Amount, each of the pre-specified rates of return will be at least equal to a minimum rate of return as specified in Part III, Section (q) of the proposed exemption. In determining the Threshold Amount, different assets or different groups of assets may be subject to different annual rates of return, with the rate of return applicable to any particular asset being established by the Agreement.[6] Net Proceeds in excess of the Funds invested capital plus the minimum return must actually be achieved (or deemed achieved upon the Termination Date or the removal of the asset manager) in order for the Threshold Amount to be reached. The Performance Fee payable to an asset manager may be reduced by all or a portion of any fees previously paid to the asset manager with respect to the assets under any prior fee arrangement if and to the extent such a reduction is called for by the Agreement and shall be subject to such other limitations as AT&T may impose.

6. As a specific provision of any Agreement which gives an asset manager complete discretion over the acquisition and disposition of assets, AT&T will require that for any sale of an asset which causes the payment of a Performance Fee and which occurs prior to the Termination Date, the sales price for the asset must be at least equal to a

[4] The Department herein is proposing an exemption only for the payment by AT&T Investment Funds of Performance Fees for services rendered to the Funds pursuant to the Agreements, and is not proposing any exemption for any other prohibited transactions or any violations of Title I, Part 4 of the Act which may arise from any other elements of the fee structure established under an Agreement.

[5] Under the proposed exemption, the term "independent valuations" means valuations based on independent and objective third party sources acceptable to AT&T (including without limitation NASDAQ, newspapers, or other general publications, or brokers which are independent of the Asset Manager and its affiliates). AT&T represents that the assets of AT&T Investment Funds to be subject to the Arrangements will consist primarily of real estate or interests in real estate which will be valued, as a general matter, by independent appraisers. However, a portion of an AT&T Investment Fund's assets subject to an Arrangement may consist of real estate-related securities, such as shares in real estate investment trusts, that may be valued using independent sources other than appraisers, such as NASDAQ and the other sources described in the definition of "independent valuations".

[6] AT&T represents that under the Agreements, asset managers will not have discretion to shift assets within the Arrangement from one class to another, and that AT&T will be responsible for determining whether assets may be shifted from one class to another during the term of the Arrangement.

certain amount (the Target Amount) in order for the asset manager to sell the asset and receive the Performance Fee without further approvals. The Target Amount for each asset will be assigned either at the time the asset becomes subject to the Arrangement, as agreed between AT&T and the asset manager, or pursuant to an objective formula approved by AT&T and the asset manager at the time the Arrangement is established. If the proposed sales price of the asset is less than the applicable Target Amount, the proposed sale must be disclosed to AT&T for approval in order for the asset manager to receive its Performance Fee as a result of the sale. If the proposed sales price is less than the applicable Target Amount and AT&T's approval is not obtained, the asset manager will continue to have authority to sell the asset but the Performance Fee which would have been payable to the asset manager by reason of the asset sale will be paid only at the Termination Date. Under each Arrangement subject to the proposed exemption, all realized income on, and proceeds from the sale of, the assets, net of expenses and reasonable reserves, will either (a) be reinvested in assets subject to the Arrangement, if the Agreement so provides or if AT&T so determines pursuant to the Agreement, or (b) cease to be subject to the Arrangement and thereby become Net Proceeds.

AT&T represents that the Target Amount concept provides protection for the AT&T Investment Fund to assure that an asset manager will not sell any assets at unduly low prices to trigger immediate payment of the related performance fee. AT&T states that this concept is intended to provide a floor on the price at which an asset can be sold and the performance fee paid immediately without having to obtain AT&T's approval. For newly-acquired assets, the minimum floor is deemed to be the cost of the asset; for previously acquired assets, the minimum floor amount is the value of the asset at the time the asset becomes subject to the Arrangement, an approach which AT&T represents to be the most logical to establish the minimum Target Amount for previously acquired assets. AT&T notes that it has the flexibility to negotiate a higher Target Amount in any case where it believes the minimum Target Amount permitted by the proposed exemption would be inadequate.

7. AT&T offers four hypothetical examples to illustrate the operation of the proposed exemption with respect to the Target Amount concept. In each example, it is assumed that the asset manager has discretion to sell the relevant asset without the prior approval of AT&T[7] and that its performance fee is equal to ten percent of all Net Proceeds in excess of the Threshold Amount. In each example, the Threshold Amount at the time the relevant asset is sold is $110:

Example 1: AT&T and an asset manager enter into an Arrangement whereby the asset manager agrees to manage a portion of the real estate investment of an AT&T Investment Fund, including Parcel X, a real estate investment to be acquired by the AT&T Investment Funds at the time the Arrangement is entered into. The cost of Parcel X is $100 cash. At the time the Arrangement is entered into, the asset manager and AT&T agree that the Target Amount shall be $100. Two years later, the asset manager sells Parcel X for $150 without the prior approval of AT&T. Having exceeded the Threshold Amount for the Arrangement, the asset manager is entitled to a performance fee of $4.00 (i.e., [$150 − $110] × .10). Since the asset manager exceeded the Target Amount for Parcel X, this performance fee is payable at the time of the sale of Parcel X.

Example 2: Assume the same facts as in Example 1 except that Parcel X was acquired by the AT&T Investment Fund three years prior to the date the Arrangement was entered, that the initial cost of Parcel X was $50, and that its value at the time it becomes subject to the Arrangement is $100. AT&T and the asset manager agree that the Target Amount is $100, the value of Parcel X at the time it becomes subject to the Arrangement. Upon the sale of Parcel X for $150, the asset manager is entitled to a Performance Fee of $4.00, calculated and payable in the same manner as described in Example 1.

Example 3: Assume the same facts as Example 2 except that the original acquisition price of Parcel X three years prior to the Arrangement was $120. AT&T and the asset manager agree that the Target Amount is $100, the value of Parcel X at the time it becomes subject to the Arrangement. Upon the sale of Parcel X, the asset manager is entitled to a performance fee equal to $4.00, calculated and payable in the same manner as described in Example 1.

Example 4: Assume the same facts as Example 3 except that the asset manager and AT&T agree that the Target Amount for Parcel X is $130 and that the asset manager sells Parcel X for $125 without the prior approval of AT&T. Upon the sale of Parcel X, the asset manager becomes entitled to a performance fee of $1.50 (i.e., [$125 − $110] × .10). However, because AT&T did not approve the sale at a price below the Target Amount, payment of the performance fee is deferred until the Termination Date of the Arrangement. Had AT&T approved the sale at the price below the Target Amount, the performance fee of $1.50 would have been payable upon the sale.

8. An Arrangement will terminate upon the Termination Date set forth in the Agreement, which may be changed with the approval of AT&T. Upon termination of an Arrangement, the assets under management will be either sold or retained by the Fund, and the asset manager will be entitled to a Performance Fee or an additional Performance Fee if the Threshold Amount has been reached at or before such time. In the case of any assets which are not sold upon termination of the Arrangement, the Performance Fee will be calculated using the fair market value of such assets as determined on the basis of independent valuations.

9. Each Arrangement will provide that the asset manager may be removed by AT&T at any time, without cause, upon AT&T's delivery of a notice of removal to the asset manager. An asset manager may resign at any time, without cause, upon written notice to AT&T. Upon removal or resignation of an asset manager, the asset manager will be entitled to receive a Performance Fee if, at the time of the asset manager's removal or resignation, Net Proceeds with respect to the assets under management would exceed an amount equal to the Threshold Amount. However, each Agreement will provide that such a Performance Fee will not be payable until the Termination Date and shall be subject to a reduction as determined under Part II, Section (i) of the proposed exemption. Accordingly, even if the aggregate value of the assets under management declines after an asset manager's removal or resignation, the asset manager will still receive a Performance Fee for the period of time that it provided services under an Arrangement if Net Proceeds, based on an assumed sale of the assets at their fair market value, exceed an amount equal to the Threshold Amount at the time of the asset manager's removal or resignation, subject to the calculation required under Part II, Section (i) of the proposed exemption. The applicant represents that this provision ensures that an appropriate reduction in the Performance Fee will be made if the aggregate value of the assets declines

[7] AT&T represents that under the typical Arrangements contemplated, it intends to retain this discretion, in which event the Target Amount concept will not apply.

after the asset manager resigns or is removed.

10. No AT&T Trust will be permitted to allocate, in the aggregate, more than twenty percent of its total assets to Arrangements which are the subject of the proposed exemption, determined at the time any such Arrangement is established and at the time of any subsequent allocation of additional assets, including the reinvestment of assets, to such Arrangement. The foregoing limitation does not apply to an AT&T Plan Assets Entity, which is defined as any group trust, partnership or other entity, the assets of which are deemed to be "plan assets" by reason of the application of 29 C.F.R. 2510.3–101, but only if (a) fifty percent or more of the interests in such entity are held by one or more AT&T Trusts and (b) AT&T is the named fiduciary or manager of the assets of such entity. An AT&T Plan Assets Entity may allocate up to one hundred percent of its asset to Arrangements subject to the proposed exemption. However, solely for determining if an AT&T Trust satisfies the twenty percent limitation, the assets of any AT&T Plan Assets Entity in which such AT&T Trust has an interest will be deemed to be the asset of such AT&T Trust only to the extent of such AT&& Trust's interest in the AT&T Plan Assets Entity. As an example, the applicant explains a hypothetical situation in which an AT&T Trust has total assets of $100 million: This AT&T Trust may allocate up to $20 million to Arrangements. In the hypothetical example, $15 million of the AT&T Trust's assets are invested in an AT&T Plan Assets Entity which has total assets of $30 million, fifty percent of which are allocated to Arrangements. For the purpose of determining if the AT&T Trust satisfies the twenty percent allocation limit, $15 million of the assets of the AT&T Plan Assets Entity, representing the AT&T Trust's investment therein, are deemed to be assets of the AT&T Trust. Because fifty percent of the AT&T Plan Assets Entity's overall assets are allocated to Arrangements, fifty percent (or $7.5 million) of this $15 million is deemed to be allocated to Arrangements. Thus, by virtue of its investment in the AT&T Plan Assets Entity, the AT&T Trust is treated as having allocated $7.5 million to Arrangements. Accordingly, in this hypothetical example, the AT&T Trust may allocate up to $12.5 million of its remaining assets to Arrangements.

11. Throughout the term of an Arrangement, AT&T will receive quarterly and annual reports prepared by the asset manager relating to the overall financial position of the assets under management, including a statement regarding the amount of all fees paid to the asset manager during the period covered by the report, and annual reports indicating the current fair market value of all assets as determined on the basis of the most recently available independent valuations, as defined in Part III, Section (k) of the proposed exemption. AT&T will also receive annual audited financial statements prepared by independent certified public accountants approved by AT&T, generally within ninety days of the end of the twelve month period covered by the statement.

12. The proposed exemption requires AT&T to provide for the maintenance, for six years, of records necessary to enable determinations of whether the conditions of the proposed exemption are satisfied. Such records must be unconditionally available at their customary location for examination during normal business by any duly authorized representative of the Department or the Internal Revenue Service, any contributing employer (or its representative) with respect to an employee benefit plan with assets held in a Fund which has entered into an Arrangement, and any participant or beneficiary (or his/her representative) of such a plan.

13. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (a) Each Arrangement is authorized in writing by AT&T as named fiduciary or manager of the relevant Fund; (b) No AT&T Trust may invest, in the aggregate, more than twenty percent of its total assets in Arrangements which are the subject of the proposed exemption; (c) AT&T will receive written reports with respect to the condition of assets and payment of fees under the Arrangements; and will maintain accessible records to enable determinations of whether the terms of the proposed exemption are satisfied; (d) The fees paid to an asset manager under any Arrangement will constitute no more than reasonable compensation; (e) The timing and formula for determining fees under the Arrangements will be established and approved by AT&T prior to a Fund's entering into an Arrangement, and will be based on pre-specified percentages of Net Proceeds after the Fund has recovered its invested capital plus a minimum pre-specified rate of return; (f) The terms of any Performance Fee will be at least as favorable to the Fund as those obtainable in arm's-length transactions with unrelated parties; and (g) AT&T may remove an asset manager under an Arrangement at any time.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Union Electric Savings Investment Plan (the Plan), Located in St. Louis, Missouri

[Application No. D–9782]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the proposed extension of credit to the Plan by Boatmen's Trust Company (BTC), a party in interest with respect to the Plan, in the form of a payment (the Advance) with respect to group annuity contract CG01285B3A (the GIC) issued by Executive Life Insurance Company (ELIC); and (2) the Plan's potential repayment of the Advance (the Repayments), provided: (a) all terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with an unrelated party; (b) no interest and/or expenses are paid by the Plan; (c) the Advance is made with respect to amounts invested by the Plan in the GIC; (d) the Repayments are restricted to the amounts, if any, paid to the Plan after August 2, 1994, by ELIC or other responsible third parties with respect to the GIC (the GIC Proceeds); (e) the Repayments do not exceed the total amount of the Advance; and (f) the Repayments are waived to the extent the Advance exceeds the GIC Proceeds.

Summary of Facts and Representations

1. The Plan is a profit sharing plan which had 6,938 participants as of March 31, 1994. The approximate aggregate fair market value of the Plan's assets as of that date was $313 million. BTC is the trustee of the Plan.

2. On February 12, 1988, $763,683.21 of the Plan's assets were invested in the GIC, yielding 8.5% compound interest with a March 1, 1993 maturity date. As of March 31, 1991, the book value of the GIC totalled $987,902.02.

3. On April 11, 1991, a California court appointed the Insurance

Commissioner of the State of California as conservator of ELIC. Pursuant to this action, payouts on ELIC's GICs were suspended.[8] Subsequently, the California Insurance Commissioner approved a Rehabilitation Plan for ELIC (the Rehab Plan), which involved, among other things, Aurora National Life Assurance Company (Aurora) assuming most of the insurance policy and GIC obligations of ELIC, in some cases at discounted values.[9] The Rehab Plan also involved liquidation of certain assets of ELIC, including real estate and so-called "junk bonds", to fund various aspects of the Rehab Plan. For holders of ELIC GICs, the terms of the Rehab Plan included an election either to:

(a) Opt into the Rehab Plan, and receive a replacement GIC from Aurora at a discounted value; or

(b) Opt out of the Rehab Plan, in return for a discounted account value (DAV) payable partly in cash now and partly in the form of future contingent cash payments from certain ELIC liquidating trusts.

4. In its capacity as trustee of the Plan, BTC ultimately selected the opt out option for the Plan. Under the terms of the Rehab Plan and the opt out election, a substantial portion of the DAV ($569,100.82) has already been received from ELIC in cash. The balance of the DAV ($260,801.20) represents the California Insurance Commissioner's estimate of the future contingent payments to be received by the Plan from the ELIC liquidating trust. It is expected that the remaining asset liquidations will take several years. The precise timing and amount of future payments is subject to uncertainty.

5. BTC is willing to make the proposed Advance in order to protect plan participants from any loss with respect to their initial principal investment in the GIC. The proposed amount of the Advance, $194,582.39, represents the difference between the Plan's initial investment in the GIC ($763,683.21) and the cash payments which have been received to date from ELIC pursuant to the Rehab Plan ($569,100.82). Without the Advance, the applicant represents that it is possible that the Plan might be unable to meet in timely fashion its obligations to pay benefits and make distributions and to accommodate participant-directed investment reallocations. BTC proposes the Advance as an alternative to being forced to "freeze" that portion of the Plan invested in the GIC. Moreover, BTC represents that the Advance will protect the Plan participants and their beneficiaries from the risk of loss and possible reduction of benefits attendant to the investment in the GIC.

6. The applicant represents that the Advance will be made in a single payment of $194,582.39. As a result of the transaction, participants will receive at least the original principal amount invested in the GIC. The proposed Advance will be made to the Plan on an interest-free, unsecured basis. The Plan will incur no expenses in connection with the proposed Advance. The proposed Advance may be repaid only out of the GIC Proceeds. If the amounts so received are less than the amount of the Advance, BTC will bear the loss, having no recourse against any other of the Plan's assets. In the event that the GIC Proceeds exceed the amount necessary to repay the Advance, the excess will be distributed to the Plan for the benefit of participants and their beneficiaries. BTC represents that it will maintain records of the proposed Advance for a period of seven years, and such records will be open for inspection at all times by the Department or any Plan participant.

7. In summary, the applicant represents that the proposed transactions will satisfy the criteria contained in section 408(a) of the Act because: (a) all terms of the transactions will be no less favorable to the Plans than those which the Plans could obtain in an arm's-length transaction with an unrelated party; (b) no interest and/or expenses will be paid by the plans; (c) the Advance will be made with respect to amounts invested by the Plan in the GIC; (d) the Repayments are restricted to the GIC Proceeds; (e) the Repayments will not exceed the total amount of the Advance; and (f) the Repayments are waived to the extent the Advance exceeds the GIC Proceeds.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 14th day of September, 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94-23121 Filed 9-16-94; 8:45 am]

BILLING CODE 4510-29-P

[8] In this proposed exemption, the Department expresses no opinion as to whether the acquisition and holding of the GIC violated any provisions of Part 4 of Title I of the Act.

[9] The Department notes that the exemption proposed herein is not intended to affect any cause of action by any participant of the Plan or the Department with respect to the GIC.

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Joint Subcommittee Meeting on Individual Plant Examinations and Probabilistic Risk Assessment

The ARCS Subcommittees on Individual Plant Examinations and Probabilistic Risk Assessment will hold a joint meeting on September 27, 1994, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, September 27, 1994—8:30 a.m. until the conclusion of business.

The Subcommittees will discuss the IPE Insights Program, PRA Policy Statement and Implementation Plan, and diesel generator problems at H.B. Robinson. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairmen; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairmen's ruling or requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. M. Dean Houston (telephone 301/415–6899) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: September 13, 1994

Paul Boehnert,

Acting Chief, Nuclear Reactors Branch.

[FR Doc. 94–23137 Filed 9–16–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 03016055]

Advanced Medical Systems, Inc. (Byproduct License No. 34–19089–01); Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that the U.S. Nuclear Regulatory Commission Staff has received a Petition dated August 19, 1994, filed by William B. Schatz, on behalf of the Northeast Ohio Regional Sewer District ("Petitioner" or "NEORSD"). The Petition requests, pursuant to 10 CFR 2.206, that the NRC take action with regard to Advanced Medical Systems, Inc. (AMS), to amend AMS's License No. 34–19089–01 to require AMS to install, maintain, and operate a radiation alarm system on all drains at 1020 London Road, Cleveland, Ohio (AMS Facility) that lead to either sanitary or storm sewers.

Petitioner asserts as the bases for this request that it views the quantity of cobalt-60 waste in the basement of the AMS facility as a major threat; that the NRC admits that the existing contamination at the AMS Facility continues to pose a risk; that the contamination that exists at the AMS Facility is estimated to be 393 curies of loose, "talcum-like" cobalt scattered upon the floor of the waste hold-up room in the basement; that cobalt-60 contamination was found in the sewer line connecting the AMS Facility to the public sewer and was found in the public sewer directly under the AMS discharge; that the NEORSD has already incurred costs of nearly $2 million addressing loose cobalt-60 contamination at its Easterly and Southerly Wastewater treatment plants; that the NRC has been unable or unwilling to explain the source of the cobalt-60 on the NEORSD property and unable to identify any likely sources for the cobalt-60 other than the AMS Facility; that the quantity of cobalt-60 at the Southerly Plant exceeds that which the AMS records show was released by AMS into the sewer system; and that License Amendment No. 10 to the original license for this site, issued to Picker in 1962, contained a requirement for an alarm system to detect unmonitored discharges. The Petitioner states that such an alarm system was not a condition of the subsequent AMS license despite a recommendation from Oak Ridge Associated Universities that such an alarm system be installed along with control valves to shut off flow to the sewer if the alarm sounds.

The Petition has been referred to the Office of Nuclear Material Safety and Safeguards pursuant to 10 CFR 2.206. As provided by Section 2.206, appropriate action will be taken with regard to the specific issue raised by the Petition in a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2110 L Street, N.W., Washington, D.C. 20555, and at the Local Public Document Room, Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 7th day of September 1994.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–23138 Filed 9–16–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–458–OLA; ASLBP No. 93–680–04–OLA]

Atomic Safety and Licensing Board; Hearing

September 13, 1994.

In the Matter of: Gulf States Utilities Co., *et al.* River Bend Station, Unit 1.

Before Administrative Judges:

B. Paul Cotter, Jr., Chairman
Dr. Richard F. Cole
Dr. Peter S. Lam

This proceeding concerns two license amendments for the River Bend Station, a nuclear facility located in Feliciana Parish, Louisiana. The amendments: (1) Authorize Gulf States Utilities Company to become a wholly owned subsidiary of Entergy Corporation; and (2) designate Entergy Operations, Inc. as a new licensee to operate, manage, and maintain River Bend.

In response to a Notice of Opportunity for Hearing, 58 FR 36,423, 36,435–36 (1993), Cajun Electric Cooperative, Inc. (Cajun) petitioned to intervene in this proceeding. On December 16, 1993, the NRC Staff issued the license amendments requested, and on January 27, 1994 an NRC Licensing Board admitted Cajun as an intervener (LBP–94–3, 39 NRC 3). The decision to admit Cajun was subsequently affirmed by the Commission on August 24, 1994 (CLI–94–10, 39 NRC ____).

Please take notice that a hearing will be conducted in this proceeding. Matters currently at issue are Cajun's contention that the proposed license amendments may result in a reduction in the margin of safety at River Bend caused by underfunding of the facility.

During the course of the proceeding, the Board may hold prehearing conferences, pursuant to 10 CFR 2.752, as well as evidentiary hearing sessions, at times and places to be announced hereafter, through notices published in the **Federal Register** and made available at the Public Document Rooms noted below.

In accordance with 10 CFR 2.715(a), any person, not a party to the proceeding, will be permitted to submit a written limited appearance statement setting forth his or her position on the issues. These statements, which may be submitted at any time during the proceeding, do not constitute testimony or evidence but may assist the Board and the parties in defining the issues to be considered. Persons desiring to submit a limited appearance statement should transmit any such statement to the Office of the Secretary, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of such statements should also be served on the Chairman of this Licensing Board. At a later date, the Board will consider whether or not to hold a session in which to hear oral limited appearance statements.

Documents related to this proceeding are available for public inspection at the NRC Document Room, 2120 L Street, N.W., Washington, D.C. 20555, and at the local public document room, Louisiana State University, Troy H. Middleton Library, Government Documents Department, Baton Rogue, Louisiana 70803.

For The Atomic Safety And Licensing Board.

Rockville, Maryland, September 13, 1994.

B. Paul Cotter, Jr.,

Chairman, Administrative Judge.

[FR Doc. 94–23139 Filed 9–16–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–423]

Northeast Nuclear Energy Company; Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–49, issued to Northeast Nuclear Energy Company (NNECO/the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 3, located in New London County, Connecticut.

The proposed amendment would revise the Technical Specifications (TS) to modify surveillance requirements by increasing the acceptance criterion for the closure of the main steam isolation valves (MSIVs) from 5 seconds to 10 seconds.

The proposed change would permit Millstone Unit 3 to resume plant operation. To resume plant operations Millstone Unit 3 must meet the operability requirements of the Technical Specifications for the MSIVs. On September 8, 1994, during monthly testing of the "C" MSIV, it was determined that the MSIV was inoperable because its closure time was determined to be greater than 5 seconds. Subsequent efforts to meet the required closure time have been unsuccessful.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

* * * The proposed change does not involve an SHC because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

NNECO's proposal to modify Surveillance Requirement 4.7.1.5.1 of the Millstone Unit No. 3 Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously analyzed.

The increase in the MSIV stroke time from 5 seconds to 10 seconds has no adverse impact on the FSAR [Final Safety Analysis Report] analyses for the feedwater line break and the main steam line break. The applicable acceptance criteria (e.g., DNBR [departure from nucleate boiling ratio] and pressure) for both 3-loop and 4-loop operation continue to be met with an increase in the MSIV closure time from 5 to 10 seconds. No other accident analyses discussed in Chapter 15 of the FSAR are affected by the proposed increase in the MSIV closure time.

Additionally, evaluations have determined that the proposal does not affect the environmental qualification program for either the main steam valve building or the containment, does not impact the design basis accident radiological consequence calculations, does not negatively impact fluid transient evaluations, has a negligible impact on the long term cooling capacity of the steam generators, and does not change pipe rupture mechanistic effects.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change does not introduce any new failure modes. It simply modifies an acceptance criterion for a surveillance requirement. As such, increasing the MSIV stroke time from 5 seconds to 10 seconds affects only the FSAR analyses for the feedwater line break and the main stream line break. No other accident analyses discussed in Chapter 15 of the FSAR are affected by the proposed increase in the MSIV closure time. The applicable acceptance criteria (e.g., DNBR and pressure) for both 3-loop and 4-loop operation continue to be met with an increase in the MSIV closure time from 5 to 10 seconds.

Additionally, evaluations have determined that the proposal does not affect the environmental qualification program for either the main steam valve building or the containment, does not impact the design basis accident radiological consequence calculations, does not negatively impact fluid transient evaluations, has a negligible impact on the long term cooling capacity of the steam generators, and does not change pipe rupture mechanistic effects.

Thus, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in the margin of safety.

The increase in the MSIV stroke time from 5 seconds to 10 seconds has no adverse impact on the FSAR analyses for the feedwater line break and the main steam line break. The applicable acceptance criteria (e.g., DNBR and pressure) for both 3-loop and 4-loop operation continue to be met with an increase in the MSIV closure time from 5 to 10 seconds. No other accident analyses discussed in Chapter 15 of the FSAR are affected by the proposed increase in the MSIV closure time. Additionally, the proposed change does not impact the consequences of an accident previously analyzed.

Based on the above, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 19, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich Connecticut 06360. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later then 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in providing the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the

Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103–3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 9, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 13th day of September 1994.

For the Nuclear Regulatory Commission.

Guy S. Vissing,

Senior Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–23140 Filed 9–16–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–327 and 50–328]

Sequoyah Nuclear Plant Units 1 and 2; Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–77 and DPR–79 issued to the Tennessee Valley Authority (the licensee) for operation of the Sequoyah Nuclear Plant, Units 1 and 2, located in Soddy Daisy, Tennessee.

The proposed amendments, submitted by the licensee's letter dated September 8, 1994, would incorporate a clarification to separate the portion of the steam generator tubing from the end of the tube up to the start of the tube-to-tubesheet weld from the remainder of the tube for the purposes of sample selection and repair when defects are found in this section of a steam generator tube.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

This change will clarify the requirements for indications found in the region of the steam generator (S/G) tube, which protrudes below the tubesheet. This region of the tube does not affect the structural integrity of the reactor coolant system (RCS) pressure boundary, since it is not part of the pressure boundary. This revision will exempt this portion of the tube from being considered under the result and action required sections of Table 4.4–2 in SQN's TS. Therefore, indications in this region will not require repairs and will not be used for the purpose of expanding the sample of tubes to be inspected under the requirements of the TS.

The condition described in this evaluation results in tube integrity considerations commensurate with Regulatory Guide 1.121 criteria both analytically and empirically. If the indications are hypothetically considered as cracks, the Row 1 tube end indications neither adversely affect S/G tube integrity or any other component, nor does the presence of the indications alter the function of the S/G or any other component. Continuing the hypothetical scenario, even if the crack propagated beyond the weld, the only consequence of an accident that could be caused by plant operation or by the occurrence of a faulted condition event with the tube end indications, would be negligible leakage from the primary to secondary system. Such leakage is expected to be insignificant at both normal and faulted conditions. Therefore, plant operation with the tube end indications present in the Row 1 tubes does not increase the probability of an analyzed accident such as a S/G tube rupture event,

2. Create the possibility of a new or different kind of accident from any previously analyzed.

Any hypothetical accident as a result of plant operation with the Row 1 tube end indications would be bounded by the consequences of a postulated S/G tube rupture. Therefore, this change does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The locations of the axial indications observed are below the tube-to-tubesheet weld. Consequently, it is concluded that the axial indications do not affect the structural and leakage integrity of the primary pressure boundary. Should the indications be single or multiple axial cracks on the tube ends, the effect of crack propagation was evaluated. Tube burst is precluded for cracks within the tubesheet by the constraint provided by the tubesheet. Therefore, crack lengths do not need to be limited by burst considerations and operating leakage limits are not required to detect crack lengths associated with the tube burst. However, primary to secondary leakage must be shown to remain within acceptable limits during all plant conditions. Leak-rate testing shows that such leakage would be negligible during all plant conditions. Since the pressure boundary integrity, acceptable leak rate, and function of the S/G are not affected by the presence of the tube end indications, the margin of safety is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public

and State comments required. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 19, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Mr. Frederick J. Hebdon: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to General Council, Tennessee Valley Authority, ET 11H, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 8, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room

located at the Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 13th day of September 1994.

David E. LaBarge, Sr.

Project Manager, Project Directorate II–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–23141 Filed 9–16–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Company; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 27 and 13 to Facility Operating License Nos. NPF–87 and NPF–89 issued to Texas Utilities Electric Company which consisted of changes to the technical specifications related to the operation of the Comanche Peak Steam Electric Station, Units 1 and 2, located in Somervell County, Texas.

The amendments are effective as of the date of issuance.

The amendments revised Technical Specification 5.3.1 to permit the use of fuel with maximum enrichments of 5.0 weight percent Uranium 235.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** to August 1, 1994 (59 FR 38991). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of these amendments will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendments dated April 22, 1994, (2) Amendment No. 27 to License No. NPF–87, Amendment No. 13 to License No. NPF–89, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III/IV.

Dated at Rockville, Maryland this 13th day of September 1994.

For the Nuclear Regulatory Commission.

Thomas A. Bergman,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–23142 Filed 9–16–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34654; File No. SR–CSE–94–08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Cincinnati Stock Exchange, Inc. Relating to Exchange Membership Application Fees

September 12, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 16, 1994, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE hereby proposed to amend the membership application fees imposed by the Exchange as follows:

Item	Current fee	Proposed fee
Yearly Membership Dues: (Quarterly Charge $625)	$2,500	[1] $2,500
New Member Application Fee	100	1,000
Transfers:		
Responsible Party Change	75	350
Firm Registration/ Name Change	75	350
CBOE Exercise Application	75	350

[1] No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Purposed Rule Change

1. Purpose

The Exchange has determined to increase the fees associated with applications for membership to more accurately reflect the costs associated with the processing of applications and to place them more in line with the fees existing on other markets. The increases apply to the initial application fee as well as the fee to exercise a Chicago Board Options Exchange ("CBOE") membership. The exercise process is part of the agreement for access between the two markets.[1] Additionally, intra-firm transfers of individuals assigned to a membership are being raised to reflect the cost of processing the transfers.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is not designed to permit unfair discrimination between customers, issuers, brokers or dealers, and in general is designed to protect investors and the public interest.

[1] Pursuant to an agreement signed in November 1986, a CBOE member may be eligible to become a proprietary member of the CSE without having to purchase and own a certificate of proprietary membership (*i.e.*, a seat on the Exchange), provided that the CBOE member meets all of the other requirements of eligibility set forth in the CSE's By-Laws. *See* Article II, Section 5.2 of the CSE's Code of Regulations (By-Laws).

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of CSE. All submissions should refer to File No. SR–CSE–94–08 and should be submitted by October 11, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–23047 Filed 9–16–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Incorporated

September 13, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Evans Withycombe Residential, Inc.
Common Stock, $.01 Par Value (File No. 7–12905)
Ampal American Israel Corp.
Warrants (File No. 7–12906)
Essex Property Trust, Inc.
Common Stock, $.0001 Par Value (File No. 7–12907)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 4, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–23130 Filed 9–16–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–34653; File No. SR–NASD–94–32]

Self-Regulatory Organizations; Order Approving Proposed Rule Change Amending the Prompt Receipt and Delivery of Securities Interpretation Relating to Short Sales

September 12, 1994.

On July 28, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change [1] pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [2] and Rule 19b–4 thereunder.[3] The rule change amends the Prompt Receipt and Delivery of Securities Interpretation ("Interpretation") issued by the NASD Board of Governors under Article III, Section 1 of the NASD Rules of Fair Practice.[4]

The NASD proposes to amend the Interpretation to require members or persons associated with members, to annotate the affirmative determination made prior to effecting a short sale. The affirmative determination requirement already appears in the Interpretation and requires, among other things, that members or associated persons assure that the securities involved in a sale will be available by settlement date. For long sales, the affirmative determination is required to be noted on the order ticket at the time the order is placed. The Interpretation as it currently reads, however, does not require that such determination be evidenced in any specific manner with respect to short sales.

Under the Interpretation as amended, members or associated persons will be required to annotate, on the trade ticket or on some other record maintained for that purpose by the member, the following information in order to comply with the affirmative determination requirement for short sales:

1. Where a customer assures delivery, the member or associated person must annotate that conversation noting the present location of the securities; whether the securities are in good deliverable form; and whether the securities will be delivered to the firm within time for settlement; or

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[1] The NASD amended the proposed rule change subsequent to the original filing on May 26, 1994. Amendment No. 1 was filed in order to clarify that the proposal applies to both NASD members and persons associated with NASD members.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] *NASD Manual*, Rules of Fair Practice, Art. III, Sec. 1, (CCH) ¶2151.04.

2. Where the member or associated person locates the stock, an annotation must be made that identifies not only the number of shares needed to cover the short sale but also the individual and firm contacted that offered assurance that the shares would be delivered or were available for borrowing by settlement date.[5]

In its proposed amendment to the Interpretation, the NASD has not specified the manner in which a member or person associated with a member must annotate compliance with the affirmative determination requirement applicable to short sales. It is clear, however, that the affirmative determination requirement contained in the amendment to the Interpretation applies to each and every transaction; a "blanket" or standing assurance that securities are available for borrowing is not acceptable to satisfy the requirement as is evidenced by the duty to annotate.

Notice of the proposed rule change, as amended, together with its terms of substance was provided by issuance of a Commission release[6] and by publication in the **Federal Register**.[7] No comments were received in response to the Notice. This order approves the proposed rule change.

As the NASD indicated in its filing, requiring annotations will enhance member compliance with the affirmative determination requirement already imposed by the Interpretation and will enable the NASD to examine member compliance with the rule more effectively. The NASD also noted that the amendment will make clear the NASD's longstanding policy that firms may not rely on daily facsimile sheets of "borrowable stocks" to satisfy their obligations under the Interpretation. The addition of the annotation requirement will preclude this practice as members or their associated persons will have to annotate the name of the person contacted, the name of the firm contacted and the number of shares for each short sale.

The Commission has determined to approve the NASD's proposal. The Commission finds that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of Section 15A(b)(6) of the Act.[8] Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The proposal will enable the NASD to more effectively enforce an already existing provision of the Prompt Receipt and Delivery Interpretation requiring members of their associated persons to affirmatively determine that shares relating to a short sale are available for delivery to a purchaser.

Requiring annotation of affirmative determinations will also enhance the NASD's ability to examine for member compliance with various other NASD short sale rules including those found in Article III, Section 21 of the Rules of Fair Practice (record keeping)[9] and in the Uniform Practice Code, Section 71 (mandatory close-outs).[10] Further, the annotation requirement will assist the NASD in examining for member compliance with the short sale rule or "bid test," recently granted temporary 18 month approval by the SEC.[11]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–94–32 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–23048 Filed 9–16–94; 8:45 am]

BILLING CODE 8010–01–M

[5] Pursuant to Rule 440C, The New York Stock Exchange ("NYSE") also requires NYSE members to make affirmative determinations prior to effecting short sales and to annotate such determinations. NYSE Information Memo 91–41 (October 18, 1991).

[6] Securities Exchange Act Rel. No. 34487 (August 4, 1994).

[7] 59 FR 40931 (August 10, 1994).

[8] 15 U.S.C. 78o–3(b)(6).

[9] *NASD Manual*, Rules of Fair Practice, Article III, Sec. 21, (CCH) ¶2171.

[10] *NASD Manual*, Uniform Practice Code, Sec. 71, (CCH) ¶3571.

[11] Securities Exchange Act Rel. No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994).

[12] 17 CFR 200.30–3(a)(12).

[Release No. 34–34655; File No. SR–NYSE–94–28]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Real Estate Investment Trusts Market Index Target-Term Securities

September 12, 1994.

I. Introduction

On July 15, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to list and trade Market Index Target-Term Securities ("MITTS"),[3] the return on which is based upon a portfolio of securities ("REIT Portfolio") of U.S. real estate investment trusts ("REITs"). Notice of the proposal appeared in the **Federal Register** on August 11, 1994.[4] The Exchange filed Amendment No. 1 to the proposed rule change on August 25, 1994.[5] No comment letters were received on the proposed rule change. This order approves the proposal, as amended.

II. Description of the Proposal

Under Section 703.19 of the Exchange's Listed Company Manual ("Manual"), the NYSE may approve for listing securities which can not be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, and warrants.[6] The NYSE is now proposing

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] "MITTS" is a registered service mark and "Market Index Target-Term Securities" is a service mark of Merrill Lynch & Co., Inc. ("Merrill Lynch").

[4] See Securities Exchange Act Release No. 34492 (August 5, 1994), 59 FR 60227 (August 11, 1994).

[5] In Amendment No. 1, the Exchange proposes to: (1) Provide that dividends paid on a component security will be included in calculating both the daily values of the REIT Portfolio and the Total Return Portfolio Value (as defined herein), regardless of any subsequent corporate event (such as insolvency) that would effect the value of the common stock of that component REIT; and (2) amend the formula for determining the weightings of the portfolio components in the Original Portfolio Value (as defined herein) to provide that no component may represent more than 10 percent of the Original Portfolio Value. See Letter from James Buck, Senior Vice President and Secretary, NYSE, to Sharon Lawson, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated August 25, 1994 ("Amendment No. 1")

[6] See Securities Exchange Act Release Nos. 29229 (May 23, 1991), 56 FR 24852 (May 31, 1991); and

under Section 703.19 of the Manual to list for trading MITTS based on the REIT Portfolio ("REIT Portfolio MITTS").[7]

As with other MITTS products, the REIT Portfolio MITTS will conform to the listing guidelines under Section 703.19 of the Manual, which provides that: (1) Issues must have a minimum public distribution of one million securities; (2) a minimum of 400 shareholders; (3) a minimum duration of one year; (4) a market value of at least $4 million; and (5) otherwise comply with the NYSE's initial listing criteria.[8] In addition, the Exchange will monitor the REIT Portfolio MITTS to verify compliance with the Exchange's continued listing criteria.[9] MITTS are non-callable senior hybrid debt securities of Merrill Lynch that provide for a single payment at maturity, and will bear no periodic payments of interest. At maturity, holders of REIT Portfolio MITTS will be entitled to receive an amount in cash based upon the "Total Return Portfolio Value;" provided, however, that the amount payable at maturity will not be less than $9 for each $10 principal amount of the REIT Portfolio MITTS. The "Total Return Portfolio Value" will be an amount based upon the change in the "Original Portfolio Value" and the value of the REIT Portfolio at maturity, plus the aggregate dollar amount of dividends paid on the components of the REIT Portfolio during the term of the REIT Portfolio MITTS. The "Original Portfolio Value" will equal $10, *i.e.*, the value of the REIT Portfolio on the date the REIT Portfolio MITTS are priced by the issuer for initial offering to the public. The value of the REIT Portfolio at maturity will be based on the average of the closing prices of the components of the REIT Portfolio for a specified number of days immediately prior to the maturity date of the REIT Portfolio MITTS.[10] REIT Portfolio MITTS are cash-settled in that they do not give the holder any right to receive a portfolio security or any other ownership right or interest in the portfolio securities, although the return on the investment is based, in part, on the aggregate portfolio value of the REIT Portfolio securities.

According to the NYSE, REIT Portfolio MITTS will allow investors to combine the protection of a portion of the principal amount of the MITTS with potential additional payments based upon the performance of a portfolio of securities representing 20 highly capitalized REITs. In particular, the proposed REIT Portfolio MITTS will provide 90% principal protection of the original issue price at maturity with the opportunity to participate in the dividend stream related to the REIT Portfolio components plus any upside appreciation of the underlying REIT Portfolio. REIT Portfolio MITTS will mature in August 2000.

As of June 6, 1994, the REIT Portfolio consisted of the common stock of 20 REITs that have significantly different levels of market capitalization, ranging from a high of approximately $2.3 billion (Simon Property Group, Inc.) to a low of approximately $216 million (Excel Realty Trust, Inc.). Also as of June 6, 1994, the exchange market prices of the components of the REIT Portfolio ranged from a high of $40.25 to a low of $11.25. The average daily trading volume for the components of the REIT Portfolio for the period from January 16, 1994, through July 14, 1994, ranged from a high of approximately 145,318 shares to a low of approximately 22,030 shares.

The common stocks of 19 of the 20 component REITs are listed on the Exchange and the common stock of the other component REIT is traded on the American Stock Exchange ("Amex"). The initial weightings of the components of the REIT Portfolio will be based upon each stock's relative liquidity (*i.e.*, relative trading volume in dollars) in the Untied States; provided, however, that no component may represent more than 10% of the Original Portfolio Value.[11]

To determine relative liquidity, Merrill Lynch will compare the average daily consolidated dollar volume of a stock over the 90-day period immediately preceding the date on which the REIT Portfolio MITTS are priced for issuance to the average daily consolidated dollar volume for all of the stocks in the REIT Portfolio for that 90-day period. As of June 6, 1994, the highest weighting for any stock in the REIT Portfolio was 10.00%[12] and the weighting for the five components with the highest relative liquidity was 42.50%. Also as of that date, the lowest weighting for any stock in the REIT Portfolio was 1.58% and the weighting for the five components with the lowest relative liquidity was 10.24%. For the six-month period from January 16, 1994, through July 14, 1994, the average dollar daily trading volume of the components ranged from a high of $2,468,375 (Simon Property Group, Inc.) to a low of $345,618 (Western Investment Real Estate Trust).

Except for certain multiplier adjustments discussed below, once the initial weightings have been determined, the multipliers will remain constant throughout the term of the REIT Portfolio MITTS. The value of the REIT Portfolio MITTS at any point in time will equal the aggregate for the components of the price of each component times the multiplier for that component plus the cumulative dividends paid on each component since the issue date for the REIT Portfolio MITTS. The multipliers assigned to the component REITs will

28217 (July 18, 1990), 55 FR 30056 (July 24, 1990") ("Hybrid Approval Orders").

[7] The Commission has previously approved the listing and trading on the Exchange of a MITTS based upon a global portfolio of securities representing telecommunications companies and one based on a portfolio of securities representing European companies. See Securities Exchange Act Release Nos. 32840 (September 2, 1993), 58 FR 47485 (September 9, 1993), and 33368 (December 22, 1993), 58 FR 68975 (December 29, 1993)) (collectively, "MITTS Approval Orders").

[8] The hybrid listing standards in Section 703.19 of the Manual are intended to accommodate listed companies in good standing, their subsidiaries and affiliates, and non-listed equities which meet the Exchange's original listing standards. Domestic issuers must also meet the earnings and net tangible assets criteria set forth in Sections 102.01 and 102.02 of the Manual. Specifically, the minimum original listing criteria requires that issuers have: (1) 2,000 holders holding 100 shares or more or have 2,200 holders with an average monthly trading volume of 100,000 shares; (2) a public float of 1.1 million shares; (3) an aggregate public market value of $18 million or total net tangible assets of $18 million; and (4) earnings before taxes of $2.5 million in the latest fiscal year and earnings before taxes of $2 million in each of the preceding two fiscal years, or earnings before taxes of $6.5 million in the aggregate for the last three fiscal years with a $4.5 million minimum in the most recent fiscal year (all three years are required to be profitable).

[9] The Continued listing criteria for capital or common stock requires that: (1) the number of holders of 100 shares or more is equal to or greater than 1,200; (2) the number of publicly-held shares is equal to or greater than 600,000; (3) the aggregate market value of publicly-held shares is equal to or greater than $5 million; (4) the aggregate market value of shares outstanding (excluding treasury stock) is equal to or greater than $8 million and average net income after taxes for the past three years is equal to or greater than $600,000; and (5) net tangible assets available to common stock are equal to or greater than $8 million and average net income after taxes for the past three years is equal to or greater than $600,000. In addition, the continued listing standards for bonds require that outstanding publicly-held bonds have an aggregate market value or principal amount equal to or greater than $1 million. See Section 802 of the Manual.

[10] In particular, the Total Return Portfolio Value will be based on the average closing prices of the REIT Portfolio component securities for the first 45 NYSE trading days of the "Calculation Period." The Calculation Period is defined as the period from and including the 90th scheduled NYSE trading day prior to the maturity date to and including the fourth scheduled NYSE trading date prior to the maturity date.

[11] See Amendment No. 1, supra note 5. For purposes of this calculation, the weight of any component that would otherwise exceed 10% of the Original Portfolio Value will be reduced to 10%. The remainder of the Original Portfolio Value will then be allocated among the remaining components of the REIT Portfolio based on relative liquidity.

[12] The weight of this component (Simon Property Group, Inc.) was reduced from 10.22% to 10% as a result of the modified weighting system described herein. *Id.*

be adjusted for certain events such as stock splits, reverse stock splits, or stock dividends, and the value of the common stock of the component REITs will also be adjusted for certain events including a liquidation, bankruptcy, insolvency, merger, or consolidation involving the issuer of the underlying shares. For example, if the issuer of the shares underlying a component REIT has been subject to a merger or a consolidation and is not the surviving entity, then the value for such common stock will be determined at the time such issuer is merged or consolidated and will equal the last available exchange market price for such common stock plus the cumulative dividends paid on that stock from the date of issuance of the REIT Portfolio MITTS through that date.[13] That value will then be constant for the remaining term of the REIT Portfolio MITTS. In addition, no adjustments of any multiplier of a portfolio security will be made unless such adjustment would require a change of at least 1% in the multiplier then in effect.

If the issuer of a portfolio security is in the process of liquidation or subject to a bankruptcy proceeding, insolvency, or other similar adjudication, such security will continue to be included in the REIT Portfolio so long as an exchange market price for such security is available. If an exchange market price is no longer available for a portfolio security, including, but not limited to, liquidation, bankruptcy, insolvency, or any other similar proceeding, then the value of that portfolio security used in calculating both the daily value of the REIT Portfolio and the Total Return Portfolio Value, will be equal to the cumulative dividends paid on that stock from the date of issuance of the REIT Portfolio MITTS through that date.[14] This value will be used as long as no exchange market price exists for that security.[15]

Based upon the exchange reported prices of the common stock of the component REITs, an independent third party will calculate and disseminate the value of the REIT Portfolio no less frequently than once every minute during the trading day.[16]

Like the other MITTS products that are listed on the NYSE, REIT Portfolio MITTS may not be redeemed prior to maturity and are not callable by the issuer. Holders of REIT Portfolio MITTS will be able to cash-out of their investment by selling the security on the NYSE. The Exchange anticipates that the trading value of the security in this secondary trading market will depend in large part on the value of the securities comprising the REIT Portfolio and also on such other factors as the level of interest rates, the volatility of the value of the REIT Portfolio, the time remaining to maturity, dividend rates, and the creditworthiness of the issuer, Merrill Lynch.[17]

Because REIT Portfolio MITTS are linked to a portfolio of equity securities, the NYSE's existing equity floor trading rules will apply to the trading of REIT Portfolio MITTS. First, pursuant to NYSE Rule 405, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading REIT Portfolio MITTS.[18] Second, consistent with NYSE Rule 405, the Exchange will further require that a member or member firm specifically approve a customer's account for trading REIT Portfolio MITTS prior to, or promptly after, the completion of the transaction. Third, REIT Portfolio MITTS will be subject to the equity margin rules of the Exchange. Fourth, in accordance with the NYSE's Hybrid Approval Orders, the Exchange will, prior to trading REIT Portfolio MITTS, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in REIT Portfolio MITTS and highlighting the special risks and characteristics of the REIT Portfolio MITTS.[19]

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5). Specifically, the Commission believes that providing for exchange-trading of REIT Portfolio MITTS will offer a new and innovative means of participating in the market for REITs. In particular, the Commission believes that REIT Portfolio MITTS will permit investors to gain equity exposure to REITs, while at the same time, limiting the downside risk of the original investment. For the reasons discussed in the MITTS Approval Orders, the Commission finds that the listing and trading of REIT Portfolio MITTS is in the public interest.[20]

As with the other MITTS products approved by the Commission, REIT Portfolio MITTS are not leveraged instruments; however, their price will still be derived and based upon the underlying linked securities. Accordingly, the level of risk involved in the purchase or sale of REIT Portfolio MITTS is similar to the risk involved in the purchase or sale of traditional common stock. Nonetheless, as with the other MITTS products, the Commission has several specific concerns regarding the trading of this type of product.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to REIT Portfolio MITTS. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of REIT Portfolio MITTS. Moreover, the Exchange will distribute a circular to its membership calling attention to the specific risks associated with REIT Portfolio MITTS.

The Commission realized that REIT Portfolio MITTS are dependent upon the individual credit of the issuer, Merrill Lynch. To some extent this credit risk is minimized by the Exchange's continued listing standards which require issuers to maintain an aggregate market value of $5 million for its publicly-held shares.[21] In addition, the Exchange's hybrid listing standards further require that REIT Portfolio MITTS have at least $4 million in market value. In any event, financial information regarding Merrill Lynch, in addition to the information regarding Merrill Lynch, in addition to the information on the issuers of the underlying securities comprising the

[13] *Id.*

[14] *Id.*

[15] Merrill Lynch will not attempt to find a replacement stock or to compensate for the extinction of a security due to bankruptcy or a similar event.

[16] If for any reason during the term of the REIT Portfolio MITTS the issuer is unable to obtain an independent third party to calculate the value of the REIT Portfolio, the issuer and the Exchange shall immediately notify the Commission to discuss the implementation of adequate procedures to protect investors and minimize any potential for manipulation.

[17] Merrill Lynch will deposit registered global securities representing REIT Portfolio MITTS with its depository, The Depository Trust Company ("DTC"), so as to permit book-entry settlement of transactions by participants in DTC.

[18] NYSE Rule 405 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

[19] See Hybrid Approval Orders, *supra* note 6.

[20] See MITTS Approval Orders, *supra* note 7

[21] See *supra* note 9.

REIT Portfolio, will be publicly available.[22]

The Commission also has a systemic concern, however, that a broker-dealer, such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will incur position exposure. As discussed in the MITTS Approval Orders, the Commission believes this concern is minimal given the size of REIT Portfolio MITTS issuance in relation to the net worth of Merrill Lynch.[23]

The Commission believes that the listing and trading of REIT Portfolio MITTS should not unduly impact the market for the individual securities contained in the REIT Portfolio. First, as discussed above, the components of the REIT Portfolio are highly capitalized, liquid stocks. Second, as discussed above, because of the restriction that no component may account for more than 10% of the initial weight of the REIT Portfolio, no single component or group of components dominates the REIT Portfolio. Third, the issuers of the securities contained in the REIT Portfolio are subject to reporting requirements under the Act, and all of the portfolio securities are listed and traded on U.S. securities exchanges. Finally, the Intermarket Surveillance Group Agreement, dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of REIT Portfolio MITTS and of the underlying component securities.[24] This, in addition to the NYSE's surveillance procedures, will serve to deter as well as detect any potential manipulation.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to allow the Exchange to list without delay REIT Portfolio MITTS as described herein. Specifically, in Amendment No. 1 to the proposal, the Exchange proposes to provide that all dividends paid on any component REIT after the date of issuance of the REIT Portfolio MITTS and prior to a corporate event which would effect the value of that component security shall be used in calculating both the daily values of the REIT Portfolio and the Total Return Portfolio Value. The Commission believes this is appropriate because it is consistent with the risks involved in the direct ownership of the individual component securities, *i.e.*, the owner of a security generally will not be required to return dividends paid by the issuer prior to the insolvency of the issuer.

The Exchange also proposes a modified weighting system in Amendment No. 1 whereby no component of the REIT Portfolio may account for more than 10% of the Original Portfolio Value. The effect of the weighting method in this case is merely to reduce the weight of one component from 10.22% to 10.00% and to raise the initial weights of the remaining components only marginally.[25] Additionally, for the full six-year term of the MITTS, the weights of the component REITS may move freely above the 10% level based on subsequent price changes among the components. As a result, the Commission believes that this weighting method has an immaterial effect on the valuation of the REIT Portfolio during the term of the MITTS and on the amount that holders of the REIT Portfolio MITTS will ultimately receive upon maturity of the MITTS.

For the reasons stated above, the Commission believes that good cause exists for approving Amendment No. 1 to the proposed rule change on an accelerated basis.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (File No. SR–NYSE–94–28), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–23049 Filed 9–16–94; 8:45 am]

BILLING CODE 8010–01–M

[22] All of the securities contained in the REIT Portfolio have been issued by companies that are subject to reporting requirements under the Act.

[23] See MITTS Approval Orders, *supra* note 6.

[24] The Intermarket Surveillance Group ("ISG") was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the Amex; the Boston Stock Exchange, Inc.; the Chicago Board Options Exchange, Inc.; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the NYSE; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (*e.g.*, the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

[25] See *supra* note 12 and accompanying text.

[26] 15 U.S.C. 78s(b)(2) (1988).

[27] 17 CFR 200.30–3(a)(12) (1992).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

September 13, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Storage Equities, Inc. Cum. Pfd Stock, Series D (File No. 7–12908)
Signal Technology Corporation Common Stock, $.01 Par Value (File No. 7–12909)
Enron Capital Resources, L.P. Pc. Cum. Pfd Securities Series A (File No. 7–12910)
Niagara Mohawk Power Corporation Pfd Stock 9.50 Pc. Series, $25 Par Value (File No. 7–12911)
CALI Realty Corporation Common Stock, $.01 Par Value (File No. 7–12912)
LSB Industries, Inc. Common Stock, $.10 Par Value (File No. 7–12913)
America West Airlines, Inc. Class B Common Stock, $.01 Par Value (File No. 7–12914)
America West Airlines, Inc. Warrants Expiring 8/25/99 (File No. 7–12915)
Harold's Stores, Inc. Common Stock, $.01 Par Value (File No. 7–12916)
Cardinal Health, Inc. Common Shares, No. Par Value (File No. 7–12917)
Air Cure Environmental, Inc. Common Stock, $.001 Par Value (File No. 7–12918)
Grupo Industrial Durango S.A. de C.V. American Depository Shares Each Representing 2 ordinary Participation Certificates (File No. 7–12919)
Evans Withycombe Residential, Inc. Common Stock, $.01 Par Value (File No. 7–12920)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 4, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–23131 Filed 9–16–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20545; 812–9176]

United Financial Group, Inc.; Notice of Application

September 12, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: United Financial Group, Inc. (the "Company").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 6(e) of the Act granting a conditional exemption from all provisions of the Act.

SUMMARY OF APPLICATION: Applicant seeks an order that would conditionally exempt it from all provisions of the Act until December 30, 1995. The requested relief would extend an exemption originally granted until December 30, 1990, and extended by subsequent orders until December 30, 1991, December 30, 1992, December 30, 1993, and December 30, 1994.

FILING DATE: The application was filed on August 18, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 6, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 5847 San Felipe, Suite 2600, Houston, Texas 77057.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Senior Attorney, at (202) 942–0565, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Company was a savings and loan holding company whose primary asset and source of income was the United Savings Association of Texas ("USAT"). As a result of the recession in Texas beginning in 1986, USAT's financial condition deteriorated, and on December 30, 1988 it was placed into receivership. The assets of USAT were sold to an unaffiliated third party and the Company received no consideration for the loss of its primary subsidiary, thereby generating a substantial tax loss. In light of this tax loss, the Company determined not to liquidate, but instead to acquire an operating business.

2. The Company's efforts to acquire an operating business have been substantially hindered due to claims asserted against it by the Federal Savings and Loan Insurance Corporation (the "FSLIC") and its successor, the Federal Deposit Insurance Corporation (the "FDIC"), which term as used herein includes the FSLIC. The FDIC asserted an approximately $534 million claim against the Company in January 1989 for failure to maintain the net worth of USAT (the "Net Worth Claim") and an approximately $14 million claim concerning certain tax refunds alleged to have been received by the Company (together with the Net Worth Claim, the "FDIC Claims"). In addition, the FDIC has asserted the existence of possible other claims (the "Indemnified Claims") against the Company and certain former officers and directors of the Company and USAT. The Company may have indemnification obligations to these former officers and directors. The FDIC has not alleged a dollar amount for any Indemnified Claims. Although the Company disputes the FDIC Claims and the Indemnified Claims, their existence constitutes a large contingent liability against the Company's assets, thus making it difficult for the Company to acquire an operating business.

3. During 1989 and 1990, the Company was in continuous negotiations with the FDIC in an attempt to reach a resolution of the FDIC Claims and in early 1990 the Company reached a tentative agreement. However, in December 1990 the FDIC rejected the Company's settlement offer and informed the Company that no counter proposal would be offered. In mid-1991, the Company again contacted the FDIC to determine whether a settlement could be reached on the FDIC Claims. Beginning in July 1991, the Company and the FDIC's representatives again began negotiations and in August 1991, the Company offered a proposed settlement. Although the FDIC has not responded to the Company's settlement proposal, in December 1991 the FDIC requested, and the Company provided, an agreement to toll the statute of limitations for the period expiring July 31, 1992. This would give the FDIC adequate time to review any possible claims against the Company that might reflect on a global settlement. This tolling agreement was subsequently extended eleven times, initially through September 30, 1992, then eventually through December 30, 1994. During this tolling period, the Company has engaged in continuous discussions with the FDIC staff and as part of that process has furnished the FDIC with documents and financial records for their review.

4. On June 30, 1994, the Company held assets of approximately $11.94 million, comprised of approximately $.27 million in cash and cash equivalents, $9.92 million in short-term investments, $1.23 million in loans and notes receivable, and $.52 million in other assets. The Company's common stock currently is traded sporadically in the over-the-counter market. The Company does not employ any full-time employees. The Company's administrative operations are handled by contract bookkeepers, accountants, and attorneys.

5. Rule 3a–2 under the Act provides a one-year safe harbor to issuers that meet the definition of an investment company but intend to maintain that status only transiently. The Company relied on the safe harbor provided by this rule from December 30, 1988 until December 30, 1989. The expiration of the safe harbor period necessitated the filing of an application for exemption. In 1990, the Company was granted conditional relief from all provisions of the Act until December 30, 1990 (the "1990 Order"). The SEC extended this exemptive relief by four subsequent orders, most recently until December 30, 1994.[1]

6. As described in detail in the applications for the Prior Orders, during a portion of the period in which the requested exemption will be effective, it is possible that the Company will be

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[1] Investment Company Act Release Nos. 17941 (Jan. 9, 1991) (notice) and 17989 (Feb. 7, 1991) (order); Investment Company Act Release Nos. 18430 (Dec. 5, 1991) (notice) and 18466 (Dec. 31, 1991) (order); Investment Company Act Release Nos. 19128 (Nov. 25, 1992) (notice) and 19175 (Dec. 22, 1992) (order); and Investment Company Act Release Nos. 19839 (Nov. 5, 1993) (notice) and 19916 (Dec. 1, 1993) (order) (together with the 1990 Order, the "Prior Orders").

subject to the jurisdiction of the federal bankruptcy courts. In this regard, the Company has formulated a plan of reorganization (the "Reorganization Plan") to be implemented under Chapter 11 of the Bankruptcy Code once the FDIC approves a settlement of the FDIC Claims. The Reorganization Plan would settle the outstanding claims against the Company and provide a structure for the possible acquisition of a new operating business or businesses. Because the bankruptcy court is charged with protecting the interests of the Company's creditors and equity interest holders, the Company believes that it is not necessary for it to comply with section 17(a) or section 17(d) with respect to transactions approved by the bankruptcy court.

Applicant's Legal Analysis

1. Section 3(a)(3) of the Act defines an investment company as an issuer engaged in the business of investing, reinvesting, owning, holding, or trading in securities, and owning investment securities having a value exceeding 40% of the value of such issuers' total assets (exclusive of government securities and cash items). The Company acknowledges that, based on its current mix of assets, it may be deemed to be an investment company under section 3(a)(3).

2. The Company requests, pursuant to sections 6(c) and 6(e) of the Act, that the SEC issue an order exempting the Company from all provisions of the Act, subject to certain exceptions, until December 30, 1995. The requested order would extend the exemption granted by the Prior Orders.

3. In determining whether to grant exemptive relief for a transient investment company, the SEC considers such factors as: (a) Whether the failure of the company to become primarily engaged in a non-investment business or excepted business or liquidate within one year was due to factors beyond its control; (b) whether the company's officers and employees during that period tried, in good faith, to effect the company's investment of its assets in a non-investment business or excepted business or to cause the liquidation of the company; and (c) whether the company invested in securities solely to preserve the value of its assets. The Company asserts that it meets these criteria.

4. The Company asserts that its failure to become primarily engaged in a non-investment business by December 30, 1994 is a result of factors beyond its control. The existence of the FDIC Claims has precluded the Company from investing its assets in a non-investment company business. Although the Company's executive officers reviewed numerous possible asset or business acquisitions, the magnitude of the FDIC Claims and the potential threat that the FDIC would seek to enjoin any utilization of the Company's assets has prevented the Company from investing its assets in a non-investment company business.

5. Pending the settlement of the FDIC Claims, the Company has limited its investments to high quality marketable securities, cash or cash equivalents. Thus, the Company asserts that it primarily invests in securities solely to preserve the value of its assets.

6. Although the Company has made substantial efforts to formulate alternative methods by which it can acquire an operating business and utilize its tax loss, the pending settlement negotiations of the FDIC Claims make it necessary for the Company to seek relief extending the relief granted by the Prior Orders. This would allow the Company to seek an FDIC settlement and, if successful, to formulate and implement new plans for becoming an operating business and utilizing the Tax Loss.

7. The Company believes that the issuance of an order exempting it from all provisions of the Act, subject to certain exceptions, until December 30, 1995 would be in the public interest and consistent with the protection of investors and the purposes of the Act.

Applicant's Conditions

The Company agrees that the requested exemption will be subject to the following conditions, each of which will apply to the Company until it acquires an operating business or otherwise falls outside the definition of an investment company:

1. During the period of time the Company is exempted from registration under the Act, it will not purchase or otherwise acquire any securities other than securities with a remaining maturity of 397 days or less and that are rated in one of the two highest rating categories by a nationally recognized statistical rating organization, as that term is defined in rule 2a-7(a)(10) under the Act.

2. The Company will continue to comply with section 9, 17(e) and 36 of the Act.

3. The Company will continue to comply with sections 17(a) and17(d), subject to the following exceptions:

(a) if the Company becomes subject to the jurisdiction of the bankruptcy court, the Company need not comply with section 17(a) or section 17(d) with respect to any transaction, including without limitation the Reorganization Plan, that is approved by the bankruptcy court; and

(b) the Company would not be required to comply with section 17(a) or section 17(d) with respect to any transaction or series of transactions that result in its ceasing to fall within the definition of an "investment company" provided that (i) no cash payments are made to an "affiliated person" (as defined in the Act) of the Company as part of such transaction or series of transactions, and (ii) no debt securities are issued to an affiliated person of the Company as part of such transaction or series of transactions unless such debt securities are expressly subordinated upon liquidation to claim of the holders of the Company's 9% Debentures.

4. The Company will continue to comply with section 17(f) of the Act as provided in rule 17f–2.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–23050 Filed 9–16–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2080]

Defense Trade Advisory Group Partially Closed Meeting

The Defense Trade Advisory Group (DTAG) will meet from 10:00–4:45 P.M. on Thursday, October 6, 1994 in the Loy Henderson Conference Room, U.S. Department of State, 2201 C Street, N.W., Washington, D.C. 20520. This advisory committee consists of private sector defense trade specialists who advise the Department on policies, regulations, and technical issues affecting defense trade.

The **Federal Register** notice of June 30, 1994 announced that the October 6 DTAG meeting would be an open meeting. After setting the agenda, State Department officials and the DTAG officers found it necessary to close the afternoon portions of the meeting.

The open session, which will be made up of all sessions preceding the lunch break, will include speakers from the Bureau of Political-Military Affairs and reports on DTAG Working Group progress, accomplishments, and future projects. Members of the public may attend the open session as seating capacity allows, and will be permitted to participate in the discussion in accordance with the Chairman's instructions.

As access to the Department of State is controlled, persons wishing to attend

the meeting must notify the DTAG Executive Secretariat by Friday, September 30, 1994. Each person should provide his or her name, company or organizational affiliation, date of birth, and social security number to the DTAG Secretariat at telephone number (202) 647–4231 of fax number (202) 647–4232 (Attention: Eva Chesteen). Attendees must carry a valid photo ID with them. They should enter the building through the C-Street diplomatic entrance (21st and C Streets, NW.), where Department personnel will direct them to the Loy Henderson auditorium.

Following the open portion of the meeting, briefings which the Department of State will arrange for DTAG members will involve discussions of classified information pursuant to Executive Order 12356. The disclosure of classified and/or proprietary information essential to formulating U.S. defense trade policies would substantially undermine U.S. defense trade relations with foreign competitors. Therefore, these segments of the meeting will be closed to the public, pursuant to section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. 552b(c)(1) and 5 U.S.C. 552b(c)(9)(B).

For further information, contact Linda Lum of the DTAG Secretariat, U.S. Department of State, Office of Export Control Policy (PM/EXP), Room 2422 Main State, Washington, DC 20520–2422. She may be reached at telephone number (202) 647–4231 or fax number (202) 647–4232.

Dated: September 13, 1994.

William Pope,

Acting Deputy Assistant, Secretary for Export Controls, Bureau of Political-Military Affairs.

[FR Doc. 94–23126 Filed 9–16–94; 8:45 am]

BILLING CODE 4710–25–M

[Public Notice 2078]

Shipping Coordinating Committee Subcommittee on Ship Design and Equipment and Associated Bodies; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 am on Friday, October 7, 1994, in Room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the Thirty-eighth session of the Subcommittee on Ship Design and Equipment (DE 38) and associated bodies of the International Maritime Organization (IMO) which is scheduled for January 23–27, 1995, at the IMO Headquarters in London. The purpose of the meeting is to discuss the papers received and the draft U.S. positions for DE 38.

Among other things, the items of particular interest are:

a. Safety of passenger submersible craft;
b. Development of safety standards for combined pusher tug-barges;
c. Guidelines for safe ocean towing;
d. Guidelines for the design and operation of passenger ships to the needs of elderly and disabled persons;
e. Use of compressed air systems for buoyancy;
f. Ventilation of vehicle decks during loading and unloading;
g. matters related to the prevention of oil pollution;
h. And matters relating to ship structures, including hull stress monitoring devices, corrosion protection for ballast tanks, and access to tank and ballast space structures;
i. Structural aspects of the on-board use of composite materials;
j. Requirements for ships intended for polar waters;
k. Revision of the Code of safety for diving systems;
l. Review of existing ships' safety standards; and
m. Guidelines on standard calculation methods for anchor positioning systems for MODUs.

The IMO Subcommittees work to develop international agreements, guidelines, and standards for the marine industry. In most cases, these international agreements, guidelines, and standards form the basis for national standards/regulations and class society rules. The U.S. Safety of Life at Sea (SOLAS) Working Group supports the U.S. Representative to the IMO Subcommittee in developing the U.S. position on those issues raised at the IMO Subcommittee meetings. Because of the impact on domestic regulations through development of these international guidelines, standards, and regulations, the U.S. SOLAS Working Group serves as an excellent forum for the U.S. maritime industry to express their ideas. All shipping companies, shipyards, design firms, naval architects, marine engineers, and consultants are encouraged to send representatives to participate in the development of U.S. positions on those issues affecting your maritime industry and remain abreast of all activities ongoing within the IMO.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: CDR Jim Stamm, U.S. Coast Guard Headquarters, Commandant (G–MTH), Room 1218, 2100 Second Street, SW., Washington, DC 20593–0001 or by calling: (202) 267–2206.

Dated: September 8, 1994.

Marie Murray,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 94–23103 Filed 9–16–94; 8:45 am]

BILLING CODE 4710–7–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements filed during the Week Ended September 9, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49757
Date filed: September 7, 1994
Parties: Members of the International Air Transport Association
Subject: Comp Telex Mail Vote 707; Cancel Cargo Rate Increases from Scandinavia.
Proposed Effective Date: October 1, 1994.

Docket Number: 49758
Date filed: September 7, 1994
Parties: Members of the International Air Transport Association
Subject: Comp Reso/P 0982 dated August 12, 1994; Composite Reso 300.
Proposed Effective Date: January 1, 1995.

Docket Number: 49759
Date filed: September 7, 1994
Parties: Members of the International Air Transport Association
Subject: Comp Reso/P 0981 dated August 12, 1994; Composite Resolutions—r-1 to r-24; Comp Reso/P 0983 dated August 12, 1994; Baggage Piece System—r-25 to r-27; Comp Reso/P 0984 dated August 12, 1994; Baggage Allowance Piece System (Japan-US)—r-28.
Proposed Effective Date: January 1, 1994.

Docket Number: 49761
Date filed: September 9, 1994
Parties: Members of the International Air Transport Association
Subject: TC1 Telex Mail Vote 708; excursion fares within South America.
Proposed Effective Date: January 1, 1995.

Docket Number: 49762
Date filed: September 9, 1994
Parties: Members of the International

Air Transport Association
Subject: Comp Reso/C 0600 dated June 3, 1994; TC1 and TC31 Cargo Resos—r-1 to r-2; Comp Reso/C 0603 dated July 12, 1994; TC12 and TC13 Cargo Resos—r-3 to r-11; Comp Reso/C 0605 dated July 26, 1994; TC3 and TC23/123 Cargo Resos—r-12 to r-13; Airline Justifications.
Proposed Effective Date: September 1, 1994.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 94–23090 Filed 9–16–94; 8:45 am]
BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 9, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49753
Date filed: September 6, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 4, 1994
Description: Application of Polar Air Cargo, Inc., pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations, applies for an amendment to its certificate of public convenience and necessity authorizing it to engage in scheduled foreign air transportation of property and mail between the U.S. on the one hand and the countries listed on the other.

Docket Number: 49763
Date filed: September 9, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 7, 1994
Description: Application of Royal Air Lines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, 14 C.F.R. Section 302.1701, for a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property and mail.

Docket Number: 49764
Date filed: September 9, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 7, 1994
Description: Application of Trans America Express Inc. d/b/a Advance Air Charters, pursuant to 49 U.S.C. Section 41302 and Subpart Q of the Regulations, applies for a foreign air carrier permit authorizing it to engage in: (1) charter foreign air transportation of persons, property and mail between points in Canada and points in the United States pursuant to the 1974 Nonscheduled Air Service Agreement between Canada and the United States; and (2) fifth-freedom, charter foreign air transportation of persons, property and mail between the United States and third countries upon Department approval.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 94–23091 Filed 9–16–94; 8:45 am]
BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

Petition for Modification of a Previously Approved Antitheft Device; BMW

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant of petition for modification of a previously approved antitheft device.

SUMMARY: In 1986, this agency granted BMW of North America, Inc.'s (BMW) petition for exemption from the parts marking requirements of the vehicle theft prevention standard for the BMW 7 Car line. This notice grants BMW's petition for a modification of the previously approved antitheft device. The agency grants this petition because it has determined, based on substantial evidence, that the modified antitheft device described in BMW's petition to be placed on the car line as standard equipment, is likely to be as effective in reducing and deterring motor vehicle theft as compliance with parts marking requirements.

DATES: The exemption granted by this notice is effective at the beginning of the 1995 model year.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740.

SUPPLEMENTARY INFORMATION: In October 1986, NHTSA published in the Federal Register a notice granting the petition from BMW of North America, Inc. (BMW) for an exemption from the parts marking requirements of the vehicle theft prevention standard for the model year (MY) 1988 BMW 7 Car line. (See 51 FR 36333, October 9, 1986). The agency determined that the antitheft device which BMW intended to install on the 7 Car line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts marking requirements of the theft prevention standard.

On February 17, 1994, BMW submitted a letter to the agency stating that the MY 1995 7 Car line would include modifications to the antitheft system that is installed as standard equipment. In a letter dated August 12, 1994, the agency informed BMW that the modification to the antitheft system on the 7 Car line appeared to be subject to NHTSA approval pursuant to 49 CFR section 543.9, *Terminating or modifying an exemption.* The agency had determined that the changes to the previously approved antitheft system were not *de minimis,* based on BMW's discussions of proposed changes to radio and glove box monitoring, and the addition of a glass breakage sensor.

On August 26, 1994, BMW submitted its petition for modification. The petition incorporated by reference certain information, dated May 29, 1986, that BMW already provided to NHTSA in its petition for exemption for the MY 1988 7 Car line. Together, the above information submitted by BMW constitutes a complete petition, as required by 49 CFR section 543.9(d), in that it meets the general requirements contained in section 543.5 and the specific content requirements of section 543.6.

In its petition for MY 1988, BMW included a detailed description of the identity, design and location of the components of the antitheft device, including diagrams of components and their location in the vehicle. BMW stated that the system consists of three lines of defense designed to prevent entry, disable the car, and scare away potential thieves. BMW described the antitheft device that was installed as standard equipment as passively activated.

BMW stated that, for MY 1995, the antitheft system will be modified in three ways:

(1) A remote control device will be added. BMW describes the remote

control device as "an integral component within the vehicle key," used to lock/unlock the door(s) and actuate the alarm system. BMW stated that the remote control device is identical to that provided for the antitheft device on the BMW 8 Car line. In a letter to BMW dated October 4, 1993, NHTSA determined that the addition of the remote on the 8 Car line is a *de minimis* change to the antitheft device.

(2) Monitoring circuits for the radio and glove box are removed. In their place, the antitheft device will monitor glass breakage. As under the original exemption, the antitheft device monitors door opening. BMW asserts that the combination of the door and glass monitoring make the occupant compartment impenetrable. If the glass is broken in order to unlock and open a door, the device sounds. Likewise, if a door is opened by a means other than breaking the glass, e.g., through the use of a slim jim, the device sounds when a door is opened.

(3) The alarm siren's decibel level is raised from 104 decibels to 112 decibels.

BMW stated that, for MY 1995, the antitheft device features a comprehensive security alarm system and an ignition/fuel system disabling device that is activated by locking the door (either driver or passenger) with the metal key. The key can be turned in the front door locks in three positions: off; 45 degrees; and 90 degrees. If the driver holds the key a little past the 90 degree position, any open windows and the sunroof close. When the key is turned 45 degrees and removed, the doors, trunk, and fuel filler door are locked and the alarm system is armed. Additionally, when the key is removed from the driver's or passenger's door lock after having been turned 45 degrees, the ignition and fuel injection systems are deactivated, immobilizing the car.

When the key is turned 90 degrees and removed, the car's alarm is armed and the doors are "double locked." The alarm monitors the doors, hood, trunk, side window glazing and ignition switch. If the key is not first turned in the driver's or passenger's door lock, the alarm will sound if someone tampers with the doors, hood, or trunk, or turns the ignition switch. When this happens, the horn will sound, and the hazard warning lamps and high beam headlights will flash.

After 30 seconds, the alarm will automatically shut off and then rearm itself within 5 seconds. The alarm system has its own separate fuse, so removal of any of the fuses in the fuse box of the engine compartment will not disarm the system. The hood has an inside lock release located underneath the dashboard, and is also tied into the alarm system. BMW stated that the electronic control unit for the system is hidden within the vehicle. Cutting, disconnecting, or manipulating system wiring will trigger the alarm. Therefore, if a thief did manage to penetrate to the battery circuit and interrupt it, the alarm systems' memory will trigger the alarm when the circuit is again completed.

The steering/ignition lock is hardened against the grip of a screw, and the housing is reinforced to prevent removal of the lock. When the key is removed, the steering lock has a mechanism that causes the lock to instantly engage, preventing steering wheel movement without any additional action. BMW states that the steering lock cannot be broken by forcing the steering wheel because a clutch in the steering drive is designed to slip long before torque sufficient to break the lock can be administered.

BMW states that the inside locking mechanism operates by means of a vertical plunger on each door, and that the plunger on the driver's door overrides the other plunger. In the event of an accident, an inertia switch will unlock all doors. The same key operates door locks and the ignition/steering lock, and can be inserted in a keyhole in either direction. To prevent locking the keys in the car upon exiting, the driver's door can only be locked with a key after it is closed.

BMW describes the key for the 7 Car line as being unique in that it has the equivalent of four rows of teeth. BMW asserts that the unique design makes the locks almost impossible to pick and the keys impossible to duplicate on the open market. Special key blanks, key cutting machines, and codes will be closely controlled and new keys will only be issued to authorized persons. Additionally, the first gate in the door lock keyway is hardened to resist the grip of a screw to prevent use of a slampuller.

BMW states that an LED warning lamp on the center console which is visible from outside of the vehicle informs the driver of the arming status of the alarm/no-start systems. Upon return to the operator's vehicle, the warning lamp informs the operator if a theft attempt has been made, or if a door, hood or trunk is not completely closed. It also indicates if there are any problems with the system. Additionally, BMW states that the vehicle's diagnostic umbilical contains extra circuits which, when plugged into the vehicle diagnostic machine at the dealership, identifies problems with the antitheft system.

As a complementary feature to the passive system, the operator may manually arm another alarm system and deactivate the vehicle's ignition/fuel systems so that a thief would not be able to start the engine and steal the vehicle. This active system is armed by the driver keying in a 4-digit code into the computer built into the dashboard.

BMW addressed the reliability and durability of its antitheft device by providing a list of American and international standards for which the antitheft system has been tested and found in compliance. This list includes various environmental tests and a Swedish regulation that requires door and ignition locks to be able to resist commonly available tools for a minimum period of 5 minutes in attempted forced entries. BMW uses the proposed system's conformance to these standards as support for the likely effectiveness of the system in reducing and deterring theft.

BMW noted that NHTSA's February 1986 Report to Congress indicates that the first year's theft rate for new introductions are generally lower because the demand for replacement parts is relatively small. BMW believes that this finding applies to its 7 Car line and that theft rates will generally be lower because of the limited total sales of these vehicles. Additionally, BMW believes that most of this car line will be stolen for the value of the whole car, not its parts. BMW stated that since parts marking seeks to deter thefts of automobiles for their parts, while antitheft devices deter all thefts, BMW believes that its antitheft system "should be considerably more effective" in reducing and deterring theft than parts marking.

BMW compares its MY 1995 antitheft system to similar systems which have previously been granted exemptions by the agency. It compared its proposed system to systems installed in the Saab 9000, Mazda 929, Infiniti M30, and Lexus LS. BMW believes that its analysis reveals that its system is equivalent to, or has more extensive features than, all of the compared systems previously granted an exemption by the agency. The agency believes that the BMW antitheft device is comparable to the systems on the cited car lines.

The 1983/84 median theft rate was 3.2712 thefts per thousand vehicles produced. (See 50 FR 46666, November 12, 1985). Based on data from the FBI's National Crime Information Center, NHTSA's official source of theft data, BMW showed that for MYs 1989

through 1992, the theft rates of the Saab 9000, Mazda 929, Infiniti M30, and Lexus LS fell mostly below 3.2712. For 1989, the Saab 9000 had a theft rate of 2.3691 (per thousand vehicles manufactured), and the Mazda 929 had a theft rate of 3.3610. No theft data were available for the Infiniti M30 or Lexus LS for 1989. For 1990/91, the Saab 9000 had a theft rate of 0.5125, the Mazda 929 had a theft rate of 2.7178, the Infiniti M30 had a theft rate of 2.7496, and the Lexus LS had a theft rate of 1.8977. For 1992, preliminary data show that the Saab 9000 had a theft rate of 0.4695, the Mazda 929 had a theft rate of 2.6477, the Infiniti M30 had a theft rate of 2.7117, and the Lexus LS had a theft rate of 2.4390.

For these reasons, BMW believes that the antitheft system proposed for installation on its 7 Car line is likely to be as effective in reducing thefts as compliance with the parts marking requirements of part 541.

NHTSA believes that there is substantial evidence indicating that the modified antitheft system installed as standard equipment on the MY 1995 BMW 7 Car line will likely be as effective in reducing and deterring motor vehicle theft as compliance with the requirements of the theft prevention standard (49 CFR part 541). This determination is based on the information that BMW submitted with its petition and on other available information. The agency believes that the modified device will continue to provide the types of performance listed in section 543.6(a)(3): promoting activation; attracting attention to unauthorized entries; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 CFR section 543.6(a)(4), the agency also finds that BMW has provided adequate reasons for its belief that the modified antitheft device will reduce and deter theft. This conclusion is based on the information BMW provided on its device. This information included a description of reliability and functional tests conducted by BMW for the antitheft device and its components.

49 CFR section 543.9(h)(2)(ii) permits the agency to establish an effective date for the modification of the antitheft device earlier than "the model year following the model year in which NHTSA issued the modification decision" upon a showing of good cause by the manufacturer that an earlier effective date for modifying its exemption is consistent with the public interest and purposes of 49 U.S.C. section 33106. In its petition, BMW stated that making the modification of its antitheft system effective beginning with MY 1995 is in the public interest since it would permit expeditious manufacture and sale of vehicles with the modified antitheft system as standard equipment. BMW stated the 1989 theft data published by NHTSA in the **Federal Register** (56 FR 7444, February 22, 1991) show that the BMW 7 Car line had a theft rate of 3.9505 per thousand vehicles stolen, somewhat above the 1983/84 median theft rate of 3.2712. BMW stated its belief that the antitheft device proposed for the MY 1995 7 Car line, with improvements that enhance the effectiveness of the antitheft system, will lower the 7 Car line's theft rate. NHTSA has reviewed this showing of "good cause" and finds that making the modification of BMW's petition effective beginning with the 1995 model year is consistent with the public interest and 49 U.S.C. section 33106.

For the foregoing reasons, the agency hereby exempts the BMW 7 Car line that is the subject of this notice, in whole, from the requirements of 49 CFR part 541.

If, in the future, BMW decides not to use the exemption for the car line that is the subject of this notice, it should formally notify the agency. If such a decision is made, the car line must be fully marked according to the requirements under 49 CFR section 541.5 and section 541.6 (marking of major component parts and replacement parts).

The agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts marking programs continue to make it difficult to compare the effectiveness of an antitheft device with the effectiveness of compliance with the theft prevention standard. The statute clearly invites such a comparison, which the agency has made on the basis of the limited data available. With implementation of the requirements of the "Anti Car Theft Act of 1992," NHTSA anticipates more probative data upon which comparisons may be made.

NHTSA notes that if BMW wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, section 543.9(c)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which section 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: September 13, 1994.

Ricardo Martinez,

Administrator

[FR Doc. 94–23093 Filed 9–16–94; 8:45 am]

BILLING CODE 4910–59–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Investment and Services Policy Advisory Committee

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of closed meeting. The September 14, 1994 meeting of the Investment and Services Policy Advisory Committee will be closed to the public.

SUMMARY: The meeting will include a review and discussion of current issues which influences U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

DATES: The meeting is scheduled for September 14, 1994, unless otherwise notified.

ADDRESSES: The meeting will be held at the United States Trade Representative from 10 am to 12 noon unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: MICHAELLE BURSTIN, DIRECTOR OF PUBLIC LIAISON, OFFICE OF THE UNITED STATES

TRADE REPRESENTATIVE, EXECUTIVE OFFICE OF THE PRESIDENT AT (202) 395–6120.

Michael Kantor,

United States Trade Representative.

[FR Doc. 94–23064 Filed 9–16–94; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 180

Monday, September 19, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: September 12, 1994, 59 FR 46884.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: September 14, 1994, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added on the Agenda scheduled for September 14, 1994:

Item No., Docket No., and Company

CAG–7

RP94–87–000 *et al.*, Natural Gas Pipeline Company of America

CAG–14

RP94–309–000, Tennessee Gas Pipeline Company

Lois D. Cashell,

Secretary.

[FR Doc. 94–23182 Filed 9–15–94; 9:05 am]

BILLING CODE 6717–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of September 19, 1994.

A closed meeting will be held on Thursday, September 22, 1994, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, September 22, 1994, at 10:00 a.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: September 14, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–23178 Filed 9–15–94; 9:05 am]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

(Meeting No. 1469)

TIME AND DATE: 10 a.m., September 21, 1994.

PLACE: TVA Knoxville Office Complex, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on August 17, 1994.

Discussion Item

1. Final Rate Review.

Action Items

New Business

A—Budget and Financing

A1. Approval of Short-Term Borrowing from the Treasury.

A2. Approval of Fiscal Year 1995 Operating Budget and Power System Capital Budget.

C—Energy

C1. Installation of Noncondensing Turbine Generator at Johnsonville Fossil Plant.

C2. Proposed Increases in Prices Under Dispersed Power Price Schedule—CSPP.

E—Real Property

E1. Easement Exchange Request by River Plantation, Inc. (RPI), to Abandon A Certain Transmission Line Easement Affecting Approximately 10 Acres of TVA's Waterville-Arlington Transmission Line Right-of-Way in Sevier County, Tennessee.

E2. Sale of Permanent Easement and Temporary Construction Easement to the City of Tupelo, Mississippi, for a Sewer Line Extension Project Affecting Approximately 0.14 Acres and 0.42 Acres in Lee County, Mississippi.

E3. Public Auction Sale of Approximately 2.10 Acres of the Tiftonia, Tennessee, Microwave Reflector Station Site in Hamilton County, Tennessee.

E4. Public Auction Sale of Approximately 1.69 Acres of Land of the former Jackson, Tennessee, Area Operating Headquarters Property in Madison County, Tennessee.

E5. Deed Modification Affecting Approximately 1.46 Acres of Private Land on Norris Lake in Campbell County, Tennessee.

F—Unclassified

F1. Filing of Condemnation Cases.

F2. Supplement to Contract 91NMB–80847D with Stone and Webster Engineering Corporation for Browns Ferry Nuclear Plant, subject to final negotiations and review prior to execution.

F3. Supplement to Contract TV–91099V with Sigma Science Engineering & Technology Applications Corporation for Engineering Support Services at Browns Ferry Nuclear Plant, subject to final negotiations and review prior to execution.

F4. Supplement to Contract 93N7B–79294A with Chem-Nuclear Systems, Inc., for Radwaste Services at TVA Nuclear Facilities.

F5. Supplement No. 2 to Personal Services Contract No. TV–90476V with P&A Consultants, Corp.

F6. Interchange Agreement with Entergy Power, Inc.

F7. Delegation of Authority to the Vice President, Fossil Fuels, to Extend for One Year the Rail Contract with CSX for Transportation Services to Widows Creek Fossil Plant.

F8. TVA Contribution to Retirement System For Fiscal Year 1995.

Information Items

1. Abandonment of Flowage Easement Rights Affecting 0.83 Acre of Private Land on Fort Loudon Lake in Knox County, Tennessee.

2. Supplement to Contract 91NNP–44970C with Ebasco Constructors.

3. Supplement to Contract No. TV–63720A with Bicentennial Volunteers.

4. TVA Line of Succession in Emergencies.

5. Agreement Between TVA and the TVA Retirement System To Provide Additional Credit for Age and Service in the System for Persons Who Voluntarily Resign from TVA.

6. Amendment to the Rules and Regulations of the TVA Retirement System for Members Who Voluntarily Resign during the Period of August 15, 1994, through October 3, 1994.

7. Grant of Easement Affecting 63.7 Acres of Land on Muscle Shoals Reservation and Pickwick Lake in Colbert and Lauderdale Counties, Alabama.

CONTACT PERSON FOR MORE INFORMATION: Ron Loving, Vice President,

Governmental Relations, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: September 14, 1994.

Edward S. Christenbury,

General Counsel.

[FR Doc. 94–23192 Filed 9–15–94; 10:24 am]

BILLING CODE 8120–08–M

federal register

Monday
September 19, 1994

Part II

Environmental Protection Agency

40 CFR Part 268

Hazardous Waste Management System; Testing and Monitoring Activities, Land Disposal Restrictions Correction; Final Rule

40 CFR Parts 148, et al.

Land Disposal Restrictions Phase II—Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL–5070–2]

Hazardous Waste Management System; Testing and Monitoring Activities, Land Disposal Restrictions Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: This action corrects the final regulations which were published Tuesday, August 31, 1993 ("Hazardous Waste Management System; Testing and Monitoring Activities; Final Rule", 58 FR 46040). This action corrects the unintended removal of text from 40 CFR 268.7(a), which sets out the generator waste analysis and recordkeeping requirements of the land disposal restrictions under Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended.

EFFECTIVE DATE: This action is effective as of August 31, 1993.

FOR FURTHER INFORMATION CONTACT: For further information about this correction contact Kim Kirkland at (202) 260–4761, Office of Solid Waste (Mailcode 5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. For information about 40 CFR 268.7(a) requirements, contact the RCRA Hotline on (800) 424–9346 (toll-free) or, in the Washington, DC metropolitan area, (703) 412–9810.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction (August 31, 1993, 58 FR 46040) amended the hazardous waste regulations for testing and monitoring activities by replacing the Second Edition, Updates I and II, of the EPA approved test methods manual "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, by incorporating by reference the Third Edition of SW–846 and its Update I into § 260.11(a) of the RCRA regulations. In addition, the final rule also made a technical amendment to § 268.7(a) (concerning waste analysis and recordkeeping requirements) whereby the reference to the appendix IX of Part 268 was revised to reference SW–846 Methods 1311 and 1310. The Agency intended to revise only the introductory text of § 268.7(a) and to retain without change all of the subparagraphs following the introductory text. However, due to an inadvertent administrative error in incorporating the August 31, 1993 rule into the 1994 edition of the Code of Federal Regulations (CFR), the subparagraphs following the introductory text were unintentionally removed. This action clarifies that subparagraphs 40 CFR 268.7(a)(1)–268.7(a)(10), as set forth in this action, remain in effect, and are regarded by EPA to have been in effect continuously in the form published in the Code of Federal Regulations revised as of July 1, 1993.

It should be noted that 40 CFR 268.7(a) as published in this action, as well as other regulations implementing the land disposal restriction (LDR) program, have been amended in a final rule that is published elsewhere in today's **Federal Register**. The regulatory text set forth in this action does not include the amendments to § 268.7(a) made by that LDR final rule. The purpose of this action is to make clear that the August 31, 1993 rule was intended only to modify the introductory text of § 268.7(a), and was not intended to delete paragraphs (a)(1)–(a)(10). Therefore, the complete version of § 268.7(a) as it *should have appeared* since the August 31, 1994 **Federal Register** is set forth in this action. Readers are urged to refer to the LDR final rule, published elsewhere in today's **Federal Register**, for the full and current text of § 268.7(a).

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

Dated: August 30, 1994.

Peter Robertson,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

Therefore, for the reasons set forth in the preamble, 40 CFR part 268 is corrected by making the following correcting amendments:

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. Section 268.7(a) is revised to read as follows:

§ 268.7 Waste analysis and recordkeeping.

(a) Except as specified in § 268.32, if a generator's waste is listed in 40 CFR part 261, subpart D, the generator must test his waste, or test an extract using the Toxicity Characteristic Leaching Procedure, Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, as incorporated by reference in § 260.11 of this chapter, or use knowledge of the waste, to determine if the waste is restricted from land disposal under this part. Except as specified in § 268.32 of this part, if a generator's waste exhibits one or more of the characteristics set out at 40 CFR part 261, subpart C, the generator must test an extract using the Extraction Procedure Toxicity Test, Method 1310 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, as incorporated by reference in § 260.11 of this chapter, or use knowledge of the waste, to determine if the waste is restricted from land disposal under this Part. If the generator determines that his waste displays the characteristic of ignitability (D001) (and is not in the High TOC Ignitable Liquids Subcategory or is not treated by INCIN, FSUBS, or RORGS of § 268.42, Table 1), or the characteristic of corrosivity (D002), and is prohibited under § 268.37 of this Part, the generator must determine what underlying hazardous constituents (as defined in § 268.2), are reasonably expected to be present in the D001 or D002 waste.

(1) If a generator determines that he is managing a restricted waste under this part and the waste does not meet the applicable treatment standards set forth in Subpart D of this part or exceeds the applicable prohibition levels set forth in § 268.32 or RCRA section 3004(d), with each shipment of waste the generator must notify the treatment or storage facility in writing of the appropriate treatment standards set forth in Subpart D of this part and any applicable prohibition levels set forth in § 268.32 or RCRA section 3004(d). The notice must include the following information.

(i) EPA Hazardous Waste Number;

(ii) The corresponding treatment standards for wastes F001–F005, F039, wastes prohibited pursuant to § 268.32 or RCRA section 3004(d), and for underlying hazardous constituents (as defined in § 268.2), in D001 and D002 wastes if those wastes are prohibited under § 268.37. Treatment standards for all other restricted wastes must either be included, or be referenced by including on the notification the applicable wastewater (as defined in § 268.2(f)) or nonwastewater (as defined in § 268.2(d)) category, the applicable subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanides), and the CFR section(s) and paragraph(s) where the applicable treatment standard appears. Where the applicable treatment

standards are expressed as specified technologies in § 268.42, the applicable five-letter treatment code found in Table 1 of § 268.42 (e.g., INCIN, WETOX) also must be listed on the notification;

(iii) The manifest number associated with the shipment of waste;

(iv) For hazardous debris, the contaminants subject to treatment as provided by § 268.45(b) and the following statement: "This hazardous debris is subject to the alternative treatment standards of 40 CFR 268.45"; and

(v) Waste analysis data, where available.

(2) If a generator determines that he is managing a restricted waste under this Part, and determines that the waste can be land disposed without further treatment, with each shipment of waste he must submit, to the treatment, storage, or land disposal facility, a notice and a certification stating that the waste meets the applicable treatment standards set forth in subpart D of this part and the applicable prohibition levels set forth in § 268.32 or RCRA section 3004(d). Generators of hazardous debris that is excluded from the definition of hazardous waste under § 261.3(e)(2) of this chapter (i.e., debris that the Director has determined does not contain hazardous waste), however, are not subject to these notification and certification requirements.

(i) The notice must include the following information:

(A) EPA Hazardous Waste Number;

(B) The corresponding treatment standards for wastes F001–F005, F039, and wastes prohibited pursuant to § 268.32 or RCRA section 3004(d). Treatment standards for all other restricted wastes must either be included, or be referenced by including on the notification the applicable wastewater (as defined in § 268.2(f)) or nonwastewater (as defined in § 268.2(d)) category, the applicable subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanides), and the CFR section(s) and paragraph(s) where the applicable treatment standard appears. Where the applicable treatment standards are expressed as specified technologies in § 268.42, the applicable five-letter treatment code found in Table 1 of § 268.42 (e.g., INCIN, WETOX) also must be listed on the notification.

(C) The manifest number associated with the shipment of waste;

(D) Waste analysis data, where available.

(ii) The certification must be signed by an authorized representative and must state the following:

I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with the treatment standards specified in 40 CFR Part 268, Subpart D and all applicable prohibitions set forth in 40 CFR 268.32 or RCRA section 3004(d). I believe that the information I submitted is true, accurate and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of a fine and imprisonment.

(3) If a generator's waste is subject to an exemption from a prohibition on the type of land disposal method utilized for the waste (such as, but not limited to, a case-by-case extension under § 268.5, an exemption under § 268.6, or a nationwide capacity variance under subpart C of this part), with each shipment of waste he must submit a notice to the facility receiving his waste stating that the waste is not prohibited from land disposal. The notice must include the following information:

(i) EPA Hazardous Waste Number;

(ii) The corresponding treatment standards for wastes F001–F005, F039, and wastes prohibited pursuant to § 268.32 or RCRA section 3004(d). Treatment standards for all other restricted wastes must either be included, or be referenced by including on the notification the applicable wastewater (as defined in § 268.2(f)) or nonwastewater (as defined in § 268.2(d)) category, the applicable subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanides), and the CFR section(s) and paragraph(s) where the applicable treatment standard appears. Where the applicable treatment standards are expressed as specified technologies in § 268.42, the applicable five-letter treatment code found in Table 1 of § 268.42 (e.g., INCIN, WETOX) also must be listed on the notification;

(iii) The manifest number associated with the shipment of waste;

(iv) Waste analysis data, where available;

(v) For hazardous debris, the contaminants subject to treatment as provided by § 268.45(b) and the following statement: "This hazardous debris is subject to the alternative treatment standards of 40 CFR 268.45"; and

(vi) The date the waste is subject to the prohibitions.

(4) If a generator is managing prohibited waste in tanks, containers, or containment buildings regulated under 40 CFR 262.34, and is treating such waste in such tanks, containers, or containment buildings to meet applicable treatment standards under subpart D of this part, the generator must develop and follow a written waste analysis plan which describes the procedures the generator will carry out to comply with the treatment standards. (Generators treating hazardous debris under the alternative treatment standards of Table 1, § 268.45, however, are not subject to these waste analysis requirements.) The plan must be kept on site in the generator's records, and the following requirements must be met:

(i) The waste analysis plan must be based on a detailed chemical and physical analysis of a representative sample of the prohibited waste(s) being treated, and contain all information necessary to treat the waste(s) in accordance with the requirements of this Part, including the selected testing frequency.

(ii) Such plan must be filed with the EPA Regional Administrator (or his designated representative) or State authorized to implement Part 268 requirements a minimum of 30 days prior to the treatment activity, with delivery verified.

(iii) Wastes shipped off-site pursuant to this paragraph must comply with the notification requirements of § 268.7(a)(2).

(5) If a generator determines whether the waste is restricted based solely on his knowledge of the waste, all supporting data used to make this determination must be retained on-site in the generator's files. If a generator determines whether the waste is restricted based on testing this waste or an extract developed using the test method described in Appendix I of this part, all waste analysis data must be retained on-site in the generator's files.

(6) If a generator determines that he is managing a restricted waste that is excluded from the definition of hazardous or solid waste or exempt from Subtitle C regulation, under 40 CFR 261.2 through 261.6 subsequent to the point of generation, he must place a one-time notice stating such generation, subsequent exclusion from the definition of hazardous or solid waste or exemption from RCRA, Subtitle C regulation, and the disposition of the waste, in the facility's file.

(7) Generators must retain on-site a copy of all notices, certifications, demonstrations, waste analysis data, and other documentation produced pursuant to this section for at least five years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site treatment, storage, or disposal. The five year record retention period is automatically extended during the course of any unresolved enforcement

action regarding the regulated activity or as requested by the Administrator. The requirements of this paragraph apply to solid wastes even when the hazardous characteristic is removed prior to disposal, or when the waste is excluded from the definition of hazardous or solid waste under 40 CFR 261.2–261.6, or exempted from Subtitle C regulation, subsequent to the point of generation.

(8) If a generator is managing a lab pack that contains wastes identified in Appendix IV of this part and wishes to use the alternative treatment standard under § 268.42, with each shipment of waste the generator must submit a notice to the treatment facility in accordance with paragraph (a)(1) of this section. The generator must also comply with the requirements in paragraphs (a)(5) and (a)(6) of this section, and must submit the following certification, which must be signed by an authorized representative:

I certify under penalty of law that I personally have examined and am familiar with the waste and that the lab pack contains only the wastes specified in appendix IV to part 268 or solid wastes not subject to regulation under 40 CFR part 261. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine or imprisonment.

(9) If a generator is managing a lab pack that contains organic wastes specified in Appendix V of this Part and wishes to use the alternate treatment standards under § 268.42, with each shipment of waste the generator must submit a notice to the treatment facility in accordance with paragraph (a)(1) of this section. The generator also must comply with the requirements in paragraphs (a)(5) and (a)(6) of this section, and must submit the following certification which must be signed by an authorized representative: I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste and that the lab pack contains only organic waste specified in Appendix V to Part 268 or solid wastes not subject to regulation under 40 CFR Part 261. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine or imprisonment.

(10) Small quantity generators with tolling agreements pursuant to 40 CFR 262.20(e) must comply with the applicable notification and certification requirements of paragraph (a) of this section for the initial shipment of the waste subject to the agreement. Such generators must retain on-site a copy of the notification and certification, together with the tolling agreement, for at least three years after termination or expiration of the agreement. The three-year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

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[FR Doc. 94–22492 Filed 9–16–94; 8:45 am]

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40 CFR Parts 148, 260, 261, 264, 265, 266, 268 and 271

[FRL–5028–9]

RIN 2050–AD89

Land Disposal Restrictions Phase II—Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: As part of the Agency's Land Disposal Restrictions (LDR) program, EPA is today promulgating treatment standards for the newly identified organic toxicity characteristic (TC) wastes (except those managed in Clean Water Act (CWA) systems, CWA-equivalent systems, or Class I Safe Drinking Water Act (SDWA) injection wells), and for all newly listed coke by-product and chlorotoluene production wastes. The required treatment standards for these wastes must be met before they are land disposed. EPA is also requiring ignitable characteristic wastes with a high total organic carbon (TOC) content and toxic characteristic pesticide wastes, that are being disposed in Class I nonhazardous waste injection wells, to either be injected into a well that is subject to a no-migration determination, or be treated by the designated LDR treatment method. Promulgation of these treatment standards for the newly identified and listed wastes and promulgation of the dilution prohibitions for high TOC ignitables and pesticides fulfills requirements of a proposed consent decree between EPA and the Environmental Defense Fund, and a settlement agreement between EPA, the Hazardous Waste Treatment Council, and a number of environmental groups including the Natural Resources Defense Council.

EPA is also making a major improvement in the Land Disposal Restrictions program in order to simplify and provide consistency in the requirements. EPA is establishing a single set of requirements, referred to as universal treatment standards, that apply to most hazardous wastes. EPA is also simplifying the Land Disposal Restrictions program by reducing paperwork for the regulated community, and improving guidance to make compliance easier. EPA is also publishing clarifying guidance regarding treatability variances, which largely restates previous Agency statements. Finally, EPA is modifying the hazardous waste recycling regulations which will allow streamlined regulatory decisions to be made regarding the regulation of certain types of recycling activities.

DATES: *Effective date:* The final rule is effective on December 19, 1994. Section 266.100 and Appendix VIII are effective September 19, 1994.

Applicability dates: For high TOC D001 (40 CFR 148.17) and halogenated pesticides wastes (40 CFR 148.17) disposed in Class I nonhazardous injection deep wells, the compliance date is September 19, 1995. For radioactive waste mixed with the newly listed or identified wastes, or soil and debris contaminated with such mixed wastes (40 CFR 268.38), the compliance date is September 19, 1996. Although the effective date of today's rule is December 19, 1994, facilities will be in compliance if they meet the universal treatment standards (UTS) before the 90-day period ends.

ADDRESSES: The official record for this rulemaking is identified as Docket Number F–94–CS2F–FFFFF, and is located in the EPA RCRA Docket, U.S. Environmental Protection Agency, Room 2616, 401 M Street, SW., Washington, DC 20460. The RCRA Docket is open from 9 am to 4 pm Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $.15 per page. The mailing address is EPA RCRA Docket (5305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 (toll-free) or (703) 412–9810 locally. For technical information about mercury and radioactive mixed waste, contact Shaun McGarvey on (703) 308–8603; for technical information about lab packs and metal Universal Treatment Standards, contact Anita Cummings on (703) 308–8303; for technical information about organic Universal Treatment Standards, contact Lisa Jones

on (703) 308–8451; for technical information about Toxicity Characteristic wastes, contact Mary Cunningham on (703) 308–8453; for technical information about petroleum refining wastes, contact Jose Labiosa on (703) 308–8464; for other information, contact Richard Kinch on (703) 308–8414; of the Waste Treatment Branch, Office of Solid Waste (5302W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, phone (703) 308–8434. For technical information on capacity analyses, contact Bengie Carroll of the Capacity Programs Branch, Office of Solid Waste (5302W), phone (703) 308–8440. For technical information on Hazardous Waste Recycling, contact Mitch Kidwell of the Regulation Development Branch, Office of Solid Waste (5304), phone (202) 260–8551.

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I. Background

A. Summary of the Statutory Requirements of the 1984 Hazardous and Solid Waste Amendments, and Requirements of the 1993 Settlement Agreement With the Environmental Defense Fund

The Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), enacted on November 8, 1984, largely prohibit the land disposal of untreated hazardous wastes. Once a hazardous waste is prohibited from land disposal, the statute provides only two options for legal land disposal: meet the treatment standard for the waste prior to land disposal, or dispose of the waste in a land disposal unit that has been found to satisfy the statutory no-migration test. A no-migration unit is one from which there will be no migration of hazardous constituents for as long as the waste remains hazardous. RCRA sections 3004 (d), (e), (g)(5).

The treatment standards may be expressed as either constituent concentration levels or as specific methods of treatment. These standards must substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized. RCRA section 3004(m)(1). For purposes of the restrictions, land disposal includes any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave. RCRA section 3004(k).

The land disposal restrictions are effective upon promulgation. RCRA section 3004(h)(1). However, the Administrator may grant a national capacity variance from the immediate effective date and establish a later effective date (not to exceed two years) based on the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available. RCRA section 3004(h)(2). The Administrator may also grant a case-by-case extension of the effective date for up to one year, renewable once for up to one additional year, when an applicant successfully makes certain demonstrations. RCRA section 3004(h)(3). See 55 FR 22526 (June 1, 1990) for a more detailed discussion on national capacity variances and case-by-case extensions.

In addition, Congress prohibited the storage of any waste which is prohibited from land disposal unless such storage is to allow for the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal. RCRA section 3004(j). For storage up to one year, EPA has taken the position that the agency bears the burden of proving that such storage was not solely for the purpose of accumulation of quantities necessary to facilitate proper recovery, treatment or disposal. 40 CFR 268.50(b). For storage beyond one year, however, the burden of proof shifts to the generator or owner/operator of a treatment, storage or disposal facility to demonstrate that such storage was solely for the purpose of accumulation of quantities necessary to facilitate proper recovery, treatment or disposal. 40 CFR 268.50(c). The provision applies, of course, only to storage which is not also defined in section 3004(k) as land disposal.

EPA was required to promulgate land disposal prohibitions and treatment standards by May 8, 1990 for all wastes that were either listed or identified as hazardous at the time of the 1984 amendments, RCRA sections 3004 (d), (e), and (g), a task EPA completed within the statutory timeframes. EPA was also required to promulgate prohibitions and treatment standards for wastes identified or listed as hazardous after the date of the 1984 amendments within six months after the listing or identification takes effect. RCRA section 3004(g)(4).

The Agency did not meet this latter statutory deadline for all of the wastes identified or listed after the 1984 amendments. As a result, a suit was filed by the Environmental Defense Fund (EDF). EPA and EDF signed a consent decree (lodged with but not entered by the District Court) that establishes a schedule for adopting prohibitions and treatment standards for newly identified and listed wastes. (*EDF* v. *Reilly*, Civ. No. 89–0598, D.D.C.) This proposed consent decree was recently modified as a result of the court decision on the Third Third final rule (*Chemical Waste Management* v. *EPA*, 976 F.2d 2 (D.C. Cir. 1992), cert. denied 113 S. Ct. 1961 (1993) (*CWM* v. *EPA*)). Today's rule fulfills several provisions of the proposed consent decree. The rule establishes treatment standards for newly listed coke by-product and chlorotoluene production wastes, and for the D018–D043 TC wastes (TC wastes identified as hazardous because of the presence of organic hazardous constituents) when these wastes are managed in systems other than those wastewater treatment systems whose discharge is regulated under the Clean Water Act (CWA), by zero-dischargers that do not engage in CWA-equivalent treatment prior to land disposal, and by injection into other than underground injection control (UIC) Class I deep injection wells regulated under the Safe Drinking Water Act (SDWA). Soils contaminated with these newly identified and listed wastes are also covered by this rule.

Finally, this rule prohibits injection into deep wells of high Total Organic Carbon ignitable wastes (D001) and Toxic Characteristic organic pesticides (D012–D017) unless they are treated to meet applicable treatment standards, or the deep well has received a no-migration variance. This last prohibition is in partial fulfillment of the settlement agreement following the D.C. Circuit's decision in *CWM* v. *EPA*.

EPA is also modifying a number of the existing land disposal restrictions rules. Although not required by the settlements discussed above, these changes reflect EPA's updated technical knowledge, simplify implementation of the program, and provide greater programmatic consistency. In today's notice, EPA is establishing a set of treatment standards (called universal treatment standards) that apply to most hazardous wastes, changing requirements for land disposal of lab packs containing prohibited hazardous wastes, and simplifying paperwork requirements.

B. Pollution Prevention Benefits

EPA's progress over the years in improving environmental quality through its media-specific pollution

control programs has been substantial. Over the past two decades, standards for pollution control concentrated to a large extent on "end-of-pipe" treatment or land disposal of hazardous and nonhazardous wastes. Although none of the treatment standards in today's rule require waste minimization or recovery, these are viable options for facilities to choose to use to comply with universal treatment standards. For example, facilities may choose to reduce the generation of wastes and/or treat certain metal-containing wastes by using high temperature metal recovery (HTMR), which has been shown to be effective for treating many metal bearing wastes.

C. Relationship of Best Demonstrated Available Technology (BDAT) Treatment Standards to Initiatives To Strengthen Federal Controls Governing Hazardous Waste Combustion Devices

On May 18, 1993, EPA Administrator Browner announced additional steps that would be pursued to protect public health and the environment by further encouraging reduction in the amount of hazardous wastes generated in this country and strengthening federal controls governing hazardous waste incinerators and other combustion devices. With the announcement, the Draft Hazardous Waste Minimization and Combustion Strategy (also referred to as the Draft Strategy) was released, upon which the Agency has sought broad national dialogue. Among other things, the Draft Strategy called for a national review of the relative roles of hazardous waste combustion and source reduction in hazardous waste management.

Since release of the Draft Strategy, the Agency has pursued a wide variety of activities. For example, EPA released in May 1994 a draft technical report entitled "Combustion Emissions Technical Resource Document". This report provides EPA's preliminary technical analysis of best operating practices and achievable emission levels with regards to emissions of dioxin and particulate matter from existing hazardous waste incinerators, and boilers and industrial furnaces (BIFs) burning hazardous wastes, based on data already submitted to EPA. The report was also released to provide for early pre-proposal dialogue on the types of additional controls and emission limits that should be adopted for hazardous waste combustion units. In another action, the Agency announced its proposed permitting and public participation rule. This rule would amend EPA's RCRA regulations to provide earlier and more effective opportunities for public participation in the RCRA permitting process. The rule also proposes tighter standards for the interim period immediately after a facility trial burn is completed but before a final permit determination is made.

Today's rule provides the Agency with another opportunity to address the objectives of the Draft Strategy. In particular, this rule specifies a series of new treatment standards that must be met before hazardous wastes are land disposed. As in previous LDR rules, the standards for hazardous organic constituents are, in many cases, based on the performance of combustion technology. In the proposed rule, the Agency solicited comments and data on whether other treatment technologies, especially recycling technologies, can achieve these or comparable treatment levels. EPA also solicited comment on whether the levels should be modified so as to allow and encourage the use of non-combustion treatment technologies.

It remains EPA's primary objective in hazardous waste management to reduce the amount of hazardous waste that is generated so as to minimize the need to treat and dispose of hazardous waste. A wide range of waste minimization activities are underway, including development of the National Plan for Hazardous Waste Minimization released in draft on May 23, 1994 as part of the Draft Strategy. However, for those hazardous wastes that are still produced and are disposed, the waste must be treated (see RCRA section 3004(m)).

While the Agency has concerns with combustion devices that are not properly designed and operated, particularly if they do not fully control toxic metals and organics (including products of incomplete combustion (PICs)), the Agency also believes that combustion technologies, if properly designed and operated, do minimize threats to human health and the environment for many waste streams. Several commenters agree with the Agency on this point. In fact, these commenters (including environmental groups) argue that relaxing the treatment standards to reduce the amount of treatment otherwise achieved via combustion could actually increase threats to human health and the environment, and thus violate EPA's statutory requirements under 3004(m). In addition, it has also been argued that loosening the treatment standards will not necessarily result in less combustion because the regulated community may still choose to rely on combustion to meet the standards. Commenters also suggested that loosening the treatment standards will actually act as a disincentive to seek pollution prevention alternatives. This latter point seems to have merit in that based on some preliminary analysis of the land disposal restrictions program by the Agency, the existing treatment standards have raised the cost of hazardous waste management substantially and have been a factor in reducing the amount of hazardous waste generated.

To address those combustion facilities that are not operated properly, the Agency will continue its aggressive inspection and enforcement program to bring the facilities back into compliance with all requirements and to impose penalties. In addition, the Agency is actively engaged with all interested parties in discussions on upgrading combustion regulations. EPA is considering, as part of this upcoming rulemaking, revising the controls on dioxin and furan emissions, particulate matter, and toxic metals. In the course of the rulemaking, the public will have the opportunity to comment on the Agency's proposals. As noted earlier, EPA is already seeking public comment on its preparatory work for this rulemaking to upgrade combustion regulations through release of the Combustion Emissions Technical Resource Document, this past May.

Several commenters indicated that the LDR treatment standards should not be based on combustion performance because this will encourage combustion over other treatment alternatives. Although the Agency is willing to look at alternative technologies, such technologies must still achieve levels of performance that satisfy the dictates of RCRA section 3004(m). Also, we must have some assurance that any alternative treatment method is done safely. No information or data was provided by these commenters on the issues of the effectiveness or safety of the alternative treatment technologies or limits, or that such alternatives would be equally or more protective of human health and the environment. (As EPA has stated many times, the Agency specifies concentration levels as the treatment standards rather than mandated methods of treatment because this provides maximum flexibility in the selection of treatment technology that may be used.)

Several commenters also asserted that only combustion technologies can achieve the levels specified as treatment standards for organics. However, no treatability data were provided to support their general assertions. On the other hand, limited data were provided on specific alternative treatment technologies that can also achieve the treatment standards in today's rule.

Therefore, the Agency is not convinced that the treatment standards for organics in today's rule require modification to be achievable by technologies other than combustion, and such other technologies may be used to meet these standards.

D. Relationship of LDR Treatment Standards to Risk-based Treatment Standards

The principal objection to the proposed UTS was that the values do not reflect risk, that is, the standards are based on performance of a treatment technology rather than on assessment of risks to human health and the environment posed by the waste. The debate over technology- versus risk-based treatment standards has continued throughout the development of the land disposal restrictions. EPA's ultimate policy preference is to establish risk-based levels that truly minimize threats to both human health and the environment. 55 FR at 6641 (Feb. 26, 1990). Such standards would cap the extent of hazardous waste treatment. RCRA section 3004(m)(1). The difficulties involved in this task, however, are formidable and very controversial. The technical issues include assessing exposure pathways other than migration to groundwater, taking environmental risk into account, and developing adequate toxicological information for the hazardous constituents controlled by the hazardous waste program.

The Agency is currently working on a rulemaking that will define hazardous constituent concentration levels below which a waste is no longer designated under RCRA subtitle C as "hazardous." Discussions concerning these levels are taking place in the Federal Advisory Committee on the Hazardous Waste Identification Rule (HWIR). The HWIR Committee is discussing issues and providing recommendations for two rulemakings: as-generated waste and contaminated media.

The HWIR Committee is made up of industry, environmentalists, treaters and disposers, and state implementing officials. The HWIR Committee has begun discussions by focusing on concentrations below which waste mixtures and treatment residuals would no longer be subject to the hazardous waste regulations ("exit criteria"), while also discussing whether there is a regulatory approach to bring under regulation clearly hazardous waste not now controlled by the hazardous waste regulations (an "entry" rule). In addition, EPA is working with the Committee to consider whether risk-based exit criteria or other risk-based values based on the same exposure modeling could also serve as minimize threat levels to potentially cap treatment standards for the land disposal restrictions.

In *Hazardous Waste Treatment Council* v. *EPA*, 886 F. 2d 355 (D.C. Cir. 1989), cert. denied 111 S. Ct 139 (1990), the court held that the statute can be read to allow either technology-based or risk-based standards, and further held that technology-based standards are permissible so long as they are not established "beyond the point at which there is no 'threat' to human health or the environment." *Id.* at 362. The court further held that the particular technology-based standards at issue were not established below this "minimize threat" level, notwithstanding that (in some cases) the standards were below Maximum Contaminant Levels used for drinking water under the Safe Drinking Water Act, and were below the RCRA characteristic level. *Id.* at 361–62. In the court's view, the RCRA section 3004(m) minimize threat standard was more stringent than that used to establish either drinking water standards or characteristic levels. EPA finds, for purposes of this rule, that none of the treatment standards are established below levels at which threats to human health and the environment are minimized. This finding stems from the Agency's inability at the present time, as explained above, to establish concentration levels for hazardous constituents which represent levels at which threats to human health and the environment are minimized. Unless the Agency determines risk-based concentration levels that achieve the "minimized threat" requirement for a particular wastestream, the Agency believes that BDAT treatment (as reflected by the UTS levels) fulfills the statutory charge.

E. Treatment Standards for Hazardous Soil

As stated in the September 14, 1993 proposal (58 FR 48124), EPA recognizes that the treatment standards promulgated for as-generated hazardous waste may not always be achievable or appropriate for soil contaminated with that waste. EPA therefore proposed less stringent alternative treatment standards that would specifically apply to hazardous soils. In addition, EPA proposed to codify the "contained-in" policy for contaminated media (see 58 FR 48127). Subsequent to the proposal, the Agency received a number of comments from the varied constituencies (industry, environmental, waste treatment and state) involved in the Hazardous Waste Identification Rule (HWIR) effort for addressing contaminated media, urging the Agency to await the results of that effort before developing soil-specific treatment standards. Thus, EPA has decided not to promulgate alternative treatment standards for hazardous soil and the codification of the contained-in policy as part of this rulemaking, but rather will address it as part of the HWIR effort for contaminated media. EPA announced this decision on November 12, 1993 (see 58 FR 59976) and again on March 8, 1994 (see 59 FR 10778).

The Hazardous Waste Identification Rule for Contaminated Media, which is being developed by EPA in concert with the States and with affected stakeholders, is intended to create a comprehensive regulatory framework within RCRA Subtitle C that will apply to the management of contaminated media that are managed as part of remediation activities. Through the public dialogue process, a conceptual framework has been developed for HWIR for media. As currently envisioned, the HWIR media rule will establish mandatory treatment requirements for soils (and possibly other media) that are highly contaminated, while less contaminated soils would be subject to management requirements of the overseeing regulatory agency. The HWIR media rule is expected to encourage national consistency in the management of higher risk media, while providing management flexibility for a significant volume of lower risk contaminated media, thereby facilitating more timely and less costly cleanups.

Although the HWIR rule for contaminated media is being developed on a different schedule than the LDR rules, EPA believes (and is supported by many commenters) that it is appropriate to address the issue of setting treatment standards for soils within the broader framework of the HWIR rule, since such treatment requirements are expected to be an integral part of that rule. In addition, EPA believes that the contained-in policy is one of the key issues that must be addressed in the development of a comprehensive regulatory framework for management of contaminated media.

In the meantime, hazardous soils are generally subject to the LDR treatment standards that apply to the hazardous wastes with which the soils are contaminated, including those addressed in today's rule.

The Agency has stated a presumption, however, that the treatment standards for as-generated wastes are generally inappropriate or unachievable for soils

contaminated with hazardous wastes, within the meaning of 40 CFR 268.44(a) (see 55 FR 8759–60, March 8, 1990). It has been the Agency's experience that contaminated soils are significantly different in their treatability characteristics from the wastes that have been evaluated in establishing the BDAT standards, and thus, will generally qualify for a treatability variance under 40 CFR 268.44. For guidance on treatability variances for soils, see the EPA Fact Sheet entitled "Regional Guide: Issuing Site-Specific Treatability Variances for Contaminated Soils and Debris from Land Disposal Restrictions (OSWER Publication 9839.3–08FS). For RCRA actions, the Regional Administrator was delegated the authority to deny or grant these variances in a non-rulemaking procedure under 40 CFR 268.44(h) on April 22, 1991. These variances may be granted by State agencies in States authorized for § 268.44. Variance authority for CERCLA actions is discussed in LDR Guides 6A (revised Sept. 1990) and 6B (OSWER 9347.3–06FS and 9347.3–06BFS).

As previously noted, EPA chose not to develop separate treatment standards for soils in this rulemaking, and currently plans to address treatment standards for contaminated soils in the context of the Hazardous Waste Identification Rule (HWIR) for contaminated media, which is currently under development. If, however, the HWIR Contaminated Media rule does not sufficiently address treatment standards for contaminated soils in a timely manner, the Agency may promulgate such standards in a separate rulemaking. Information on the HWIR Contaminated Media rule may be obtained by contacting Carolyn Loomis, at (703) 308–8626.

Until LDR standards specific to soils are promulgated, EPA believes that treatability variances will generally be appropriate when hazardous soils are managed as part of site remediation activities. The Agency recognizes, however, that in some cases obtaining a treatability variance as provided under § 268.44 could cause delays in implementing remedial actions. The Agency is currently considering whether changes to the existing variance or authorization procedures should be made as a means of expediting cleanup actions that are conducted under RCRA or other Federal or State authorities, or other cleanups initiated by responsible parties. Such changes, if necessary, will be addressed in a future rulemaking.

II. Summary of Rule

A. Treatment Standards for Newly Identified Organic Toxicity Characteristic (TC) Wastes

On March 29, 1990, EPA promulgated a rule that identified organic constituents (in addition to existing EP metals and pesticide constituents) and levels at which a waste is considered hazardous based on the characteristic of toxicity (55 FR 11798). Because these wastes were identified as hazardous after the enactment date of HSWA in 1984, they are "newly identified wastes" for purposes of the LDR program. Included are wastes identified with the codes D018 through D043 based on the toxicity characteristic leaching procedure (TCLP), i.e., TC wastes. EPA is establishing treatment standards for each of these constituents if they are managed in systems other than those regulated under the Clean Water Act (CWA), those engaging in CWA-equivalent treatment prior to land disposal, and those injected into Class I deep injection wells regulated under the Safe Drinking Water Act (SDWA). (For an explanation of these qualifications, see the May 24, 1993 Interim Final Rule (58 FR 29860).) In addition, because wastes exhibiting the toxicity characteristic (TC) can contain treatable levels of other hazardous constituents, EPA is establishing treatment standards for the underlying hazardous constituents, as defined in 268.2(i). These rules are consistent with the court's opinion in *Chemical Waste Management* v. *EPA*, 976 F.2d 2, 17–8 (D.C. Cir. 1992), cert. denied 113 U.S. 1961 (1993), which held that all hazardous constituents in characteristic wastes must meet the levels of performance satisfying the requirements in RCRA 3004(m) before land disposal, and that treatment standards cannot be achieved by dilution (provided, of course, that treatment standards are not established below the level at which threats to human health and the environment are minimized).

B. Prohibition of Dilution of High TOC Ignitable and of TC Pesticide Wastes Injected Into Class I Deep Wells

In its ruling on the Third Third LDR Rule, the D.C. Circuit Court of Appeals remanded the portion of the Agency's rule allowing treatment standards for characteristic wastes to be achieved by dilution. The Agency is continuing to develop a regulatory response to implement the court's ruling. As part of that response, EPA is today requiring that hazardous constituents in two types of characteristic wastes, high total organic carbon (TOC) ignitable liquids (D001), and halogenated pesticide wastes that exhibit the toxicity characteristic (D012–D017), be fully treated before those wastes are disposed unless the wastes are disposed in an injection well that has a no-migration variance.

The Agency believes that treatment of these particular wastestreams is warranted. (See Section VIII—Deep Well Injection Issues for further discussion.) The D001 wastes are ignitable with potentially high concentrations of hazardous constituents, and the pesticide wastes contain particularly toxic constituents. Further, the organics in D001 high TOC liquids can be recovered, destroyed, or used as a fuel and occur in only small volumes so that segregation and treatment should not prove difficult.

C. Treatment Standards for Newly Listed Wastes

EPA has promulgated a number of hazardous waste listings since the enactment of HSWA in 1984, referred to as "newly listed wastes" under the LDR program. This rule describes the treatment technologies (recycling is a type of treatment) identified as BDAT for several of these newly listed wastes, and establishes treatment standards based on these BDATs. Newly listed wastes included in today's rule are K141–K145, K147–K148, and K149–K151 (coke by-product production wastes and chlorotoluene wastes) (see 40 CFR 261.32 for a description of these wastes).

D. Universal Treatment Standards

Today's rule promulgates universal treatment standards (UTS) for organic, metal, and cyanide constituents—one set for wastewaters and a different set for nonwastewaters—that replace existing treatment standards for hazardous wastes. ("Replace" is something of a misnomer, as explained more fully below, since many of the standards actually remain at current levels, and the rule does not require treatment of hazardous constituents not already regulated under current standards.) Currently, facilities managing hazardous wastes must meet LDR treatment standards established for many different listed and characteristic hazardous waste codes before the waste may be land disposed. In some cases, a constituent regulated under the treatment standard for one waste was also regulated in another waste at different concentration levels. Today's rulemaking eliminates these differences in concentration limits for the same constituent to provide a better assessment of treatability, reduce

confusion, and ease compliance and enforcement. Promulgation of UTS does *not* change the constituents of concern regulated in listed wastes—that is, if only cadmium, lead and chromium have been regulated in a listed waste, only cadmium, lead and chromium are subject to regulation now that UTS are promulgated. However, the concentration levels for cadmium, lead and chromium now are numerically identical with UTS for those constituents.

E. Modifications to Hazardous Waste Recycling Regulations

The Agency is modifying the regulatory framework to the definition of solid waste to allow environmentally beneficial recycling operations to continue without the regulatory impediments imposed by full RCRA Subtitle C requirements. In turn, this will allow EPA and the states to streamline their efforts and better focus on operations that are part of the nation's waste disposal problem, rather than on those that are not, while the Agency continues to look at the overall definition.

These modifications will broaden the 40 CFR 261.2(e)(1)(iii) "closed-loop" recycling exclusion from the definition of solid waste such that the residues of a secondary process are excluded from being a solid waste if they are reinserted into the process without prior reclamation (and also similarly broaden the related 40 CFR 260.30(b) variance for materials that are reclaimed prior to reinsertion). These provisions will put secondary recovery operations that recycle residues which they generated on the same regulatory footing as primary recovery operations. The modifications are based, in part, on two Court opinions (*American Petroleum Institute* v. *EPA*, 906 F.2d 726 (D.C. Cir. 1990) (*API*) and *American Mining Congress* v. *EPA*, 907 F. 2d 1179 (D.C. Cir. 1990) (*AMC II*)) which indicate that the Agency has some discretion to consider the manner in which a secondary material is managed in determining RCRA jurisdiction (i.e., RCRA jurisdiction may be determined, at least in part, by consideration of whether the material is part of the waste management problem, as indicated by the potential for the material to pose a hazard to human health and the environment when recycled).

III. Improvements to the Existing Land Disposal Restrictions Program

A. Background

"Our goal is to make the entire federal government both less expensive and more efficient . . . we intend to redesign, to reinvent, to reinvigorate the entire national government."

President Bill Clinton Remarks Announcing the National Performance Review, March 3, 1993

"We are searching for ways to change—to work better and smarter so that the Agency can deliver high quality results at a reduced cost. Our aim is to treat citizens as customers, improve the service and delivery of our programs, and eliminate waste and inefficiency."

From "Creating A U.S. Environmental Protection Agency that Works Better And Costs Less" (EPA's National Performance Review Phase I Report)

In the past several years, the EPA has embarked on major efforts to improve the quality of its work in protecting human health and the environment. Coincident with this emphasis on improvement in the way its work is done, the Agency is striving to help reinvent government, in part by streamlining its organization and its work in order to be more efficient and save public resources. In that spirit, a major part of today's rule is designed to improve the quality and efficiency in the Land Disposal Restrictions Program. The measures promulgated today to improve the Program received widespread support from commenters when they were proposed.

The universal treatment standards, described in detail in the next section, greatly simplify both compliance and enforcement with the LDRs, without sacrificing protection of the environment or human health. In particular, the rule replaces the myriad constituent concentration levels in the LDR treatment standards for most hazardous wastes with a uniform set of constituent levels. Thus, the treatment standard concentration for a constituent in waste A will be the same concentration as for that constituent in waste B. As a result, hazardous waste generators and treaters should be able to save money and effort in treating hazardous wastes. These facilities will be able to operate more efficiently by consolidating treatment activities. One facility, for example, estimated an annual savings of $750,000 from not having to campaign treat their wastes with varying limits. The consistency provided by universal treatment standards will make it easier to comply with the LDRs. Likewise, the universal treatment standards will make the job of enforcement easier for state governments. With universal treatment standards in place, it will also be easier and quicker for EPA to set standards for hazardous wastes identified in the future (assuming those standards are feasible and appropriate for newly identified and listed wastes). The end result for the regulated community, states, and the EPA will be to save resources for other pressing tasks.

While establishment of universal treatment standards is the primary improvement, other improvements are also included in today's rule. In particular, the Agency is:

- Consolidating three separate tables containing treatment standards into a single consolidated table;
- Reducing the information required on notification forms;
- Simplifying the regulations for treatment of lab packs;
- Providing easy-to-read flowcharts and a simple guide to paperwork requirements in order to make the rule's requirements clearer and easier to implement.

Although today's rule takes significant steps in improving the Land Disposal Restrictions program, the Agency recognizes that further, in fact continuing, improvement is necessary. Some of the universal treatment standards (such as cyanide) will need to be reassessed upon completion of Agency efforts to improve the analytic test method. HWIR will need to be integrated into the Land Disposal Restrictions. The Agency is also on a firm track of pursuing other avenues for continuous quality improvement in the program. Ideas and suggestions for improvements have, and will, come from: (1) Advance Notices of Proposed Rulemaking published by EPA in order to acquire as much information as possible from the public about treatment options; (2) communications between EPA and its customers representing environmental groups, generators, and treaters; and, (3) the LDR Program evaluation that is currently being conducted, which was initiated by a public roundtable discussion with a large number of customers. Consequently, the Agency will continue to take advantage of opportunities to streamline and improve the LDR program.

B. Universal Treatment Standards

The EPA is promulgating a single universal treatment standard (UTS) for each constituent in nonwastewater form and a single UTS for each constituent in wastewater form, regardless of the hazardous waste containing the constituent.

1. Identification of Wastes to Which Universal Treatment Standards Apply

The universal treatment standards apply to all listed and characteristic

wastes for which treatment standards have been promulgated, with two exceptions. The first exception is the TC metal wastes (D004–D011). These metal wastes will be addressed in the future Phase IV LDR rule. (It should be noted that the mineral processing wastes which were formerly excluded from RCRA Subtitle C regulation under the Bevill Amendment are considered to be newly identified and will also be addressed in Phase IV.) The second exception is those for which the treatment standard is a specified method of treatment. Most of these wastes must continue to be treated using those required technologies. For a small number of wastes with previously specified methods of treatment, the universal standards are an alternative, i.e. either use of the specified method or the universal standard will satisfy the LDR requirement. For those few situations where a mixture of wastes may be subject to different standards for the same constituent, the more stringent standard continues to apply. See § 268.41(b).

Although the proposed rule excluded F024 from the UTS, EPA is applying UTS to F024 in today's rule. The existing standards, which were unique among standards set for F- or K-listed wastes, incorporated numerical treatment standards and also mandated a specific technology—incineration. The original F024 numerical standards for metals were also exceptionally low, reflecting the fact that F024 contains only low levels of metals.

However, comments from Dow Freeport indicated that the low F024 metal limit needlessly prevented them from co-treating wastes, a process that could save the facility $750,000/year, and that application of UTS solved this problem without diminishing the extent of treatment. EPA agrees, and is applying UTS to F024 in this rule while continuing to require incineration.

UTS apply to underlying hazardous constituents in characteristic wastes that are subject to LDRs. Apparent confusion in several comments leads the Agency to clarify that UTS will apply to the F039 waste code, the code for multi-source leachate. EPA used the F039 levels in the May 1993 Interim Final Rule as treatment standards for underlying hazardous constituents in certain decharacterized D001 and D002 wastes (58 FR 29885). Consequently, UTS levels and F039 standards are identical, with the exception of those few constituents regulated in F039 but not in UTS. This means that the Interim Final Rule requirement that underlying hazardous constituents in certain D001 and D002 wastes meet F039 levels is now one and the same thing with the requirement that underlying hazardous constituents meet UTS. (The term "underlying hazardous constituents" is defined at 268.2(i)).

2. Differences in Universal Treatment Standards and Previous Treatment Standards

In most cases (59%), UTS are the same as the previous treatment standards. Thirty three percent of the standards went up or down within a factor of ten of the original standard, while 8% underwent larger changes (3% of the total number of UTS becoming significantly more stringent). The following table lists the differences between the UTS and previous standards.

TABLE 3.—COMPARISON OF UNIVERSAL TREATMENT STANDARDS TO PREVIOUSLY PROMULGATED TREATMENT STANDARDS

Parameter	Wastewater forms	Nonwastewater forms
Total Number of Constituent/Waste Code Combinations	938	924
Number of Combinations Unchanged by the Universal Treatment Standards	677	416
Number of Combinations for which the Universal Treatment Standards are Slightly Less Stringent[1]	138	209
Number of Combinations for which the Universal Treatment Standards are Slightly More Stringent[1]	76	199
Number of Combinations for which the Universal Treatment Standards are Significantly Less Stringent[2] ..	17	80
Number of Combinations for which the Universal Treatment Standards are Significantly More Stringent[2] ..	30	20

[1] The change is less than a factor of ten greater or less than the previously promulgated standard.

[2] The change is a factor of ten or more greater or less than the previously promulgated standard.

This numerical comparison somewhat exaggerates the degree of change. The changes in numerical values for many of the organic constituents reflect adjustments in the limits of analytic detection. Actual treatment will consequently likely continue to destroy or remove organics to nondetectable levels. It also is important to note that even in those cases where numerical limits have changed, the technology basis has not. Treatment technology used to comply with the previous standards should also be able to comply with UTS. Again, because most treatment technologies cannot be so precisely calibrated as to achieve, for instance, 3.5 ppm rather than 2.7 ppm, the likely result is that the same amount of treatment will occur. The main impact of UTS will be in simplifying compliance.

EPA also notes that very few of the commenters who complained about treatment standards being unachievable provided data to support their claims. Because most of the wastes subject to UTS are already subject to LDR treatment requirements, there should be data documenting treatment performance of these wastes that commenters could have submitted. EPA believes, therefore, that the absence of substantiating data cannot be attributable to commenters' inability to generate treatment data. (The situation differs from the state of affairs at the beginning of the land disposal restrictions program when there was little existing treatment data to draw upon, because many hazardous wastes were being disposed untreated, and there was little time to generate such data.)

For discussion of comparison between the UTS and previous standards for

nonwastewater metal constituents, see section III.B.5.a. of this preamble.

3. Universal Treatment Standards for Organic Hazardous Constituents

EPA is today promulgating UTS for nonwastewater and wastewater forms of organic hazardous constituents, as found in the two tables in this section.

a. Analyte Combinations

Motivated by concern for analytical feasibility, EPA proposed that several groups or pairs of analytically similar organic compounds be regulated as the sum of their concentrations rather than as individual analytes. Commenters supported these proposals as a simplification of analytical procedures, particularly the proposed total PCB standards for arochlors. Thus, today's rule regulates each of these groups or pairs collectively by setting wastewater and nonwastewater numbers representing their sums rather than individual concentrations. Specific analytes to be regulated with one wastewater and nonwastewater number are PCBs (arochlors), xylenes, benzo(b)fluoranthene/ benzo(k)fluoranthene and diphenylamine/diphenylnitrosamine.

PCBs: Today's approach for PCBs is consistent with the regulations of other EPA offices, such as those promulgated pursuant to the Toxic Substance Control Act (TSCA). This approach will also eliminate analytical difficulties in quantifying each of the individual arochlors.

The "Total PCB" standards include seven arochlors that represent hundreds of isomers of polychlorinated biphenyls. Earlier LDR regulations addressed individual arochlors and required recognition of a gas chromatograph pattern which is often difficult to differentiate. Furthermore, regulation of individual arochlors may be difficult for wastes subject to degradation or treatment. EPA recommends SW–846 methods 8080 or 8081 (which use a gas chromatograph/electron capture detector) for measurement of total PCBs.

Xylenes: Similarly, today's rule regulates the sum of several xylene isomer analytes in both wastewaters and nonwastewaters. The three xylenes included on the BDAT list of hazardous constituents are ortho-, meta-, and para-xylene. Meta- and para-isomers co-elute in gas chromatograph analysis. Two methods exist in SW–846 for the measurement of total xylenes: 8020 and 8240. Method 8020 detects xylenes using a photoionization detector and 8240 uses a mass spectrometer. Total xylenes concentration is determined from the addition of the ortho-xylene concentration and the meta-/para-xylene concentration.

Benzo(b)fluoranthene/ Benzo(k)fluoranthene and Diphenylamine/ Diphenylnitrosamine: EPA is also regulating two pairs of analytically problematic constituents, benzo(b)fluoranthene/ benzo(k)fluoranthene and diphenylamine/diphenylnitrosamine with a single wastewater and nonwastewater number for each pair.

b. Organics—Nonwastewaters

i. The Universal Treatment Standards Promulgated in Today's Rule

EPA is promulgating UTS for organics in nonwastewaters as proposed with the exception of the standards for m- and p-cresols. These are the only organic constituents for which commenters provided data supporting changes to the proposed UTS. Although organic nonwastewater UTS differ in some cases from the previously promulgated standards, the same technology basis, combustion, can meet the limits. In the previous standards as well as the UTS, the organic standards are based on a detection level in a combustion residue (adjusted upward by a variability factor accounting for analytic and process variability). Differences between UTS and previous standards reflect a more consistent assessment of achievable detection levels for various constituents in combustion residues, and continue to be achievable using BDAT, combustion. Because the essential technical issue at the heart of these adjustments is the value of the detection limit, most of these changes reflect analytical artifacts rather than absolute differences in the quantities of toxics available for release following land disposal.

ii. Modifications to Universal Treatment Standards Made in Response to Comments

A petroleum refiner involved in building a biological treatment system submitted data on organic nonwastewaters, and indicated their concern about the lower treatment standards for certain organic constituents that were proposed as UTS. The Agency evaluated the commenter's data and found, in some cases, the commenter was requesting that UTS levels be set at levels higher than the maximum levels in their untreated wastes. Furthermore, the commenter's data did not represent proper monitoring. The Agency was able to determine from their data, however, that one limit, the proposed m- and p-cresol limit, should be raised from 3.2 mg/kg to 5.6 mg/kg. This adjustment is based on other factors described below.

The proposed UTS for m- and p-cresol was 3.2 mg/kg, which differed from the proposed UTS for o-cresol, which was 5.6 mg/kg. Today's rule promulgates 5.6 mg/kg for both o-cresol and m- and p-cresol. The proposed limits for cresols were based on a detection limit of 2 mg/kg for o-cresol and 1 mg/kg for m- and p-cresol from an incinerator ash study used to develop nonwastewater standards in the Third Third rulemaking. The differences in detection limits occurred because EPA used different treatment tests to set the limits for o- versus m- and p-cresol. Examination of the same test runs revealed that where o-cresol had a detection level of 2 mg/kg, the detection level for m- and p-cresol was also 2 mg/kg. In addition, where the detection level for m- and p-cresol was 1 mg/kg, the detection level for o-cresol was also 1 mg/kg. Upon further review of other data, the Agency observed that within a test, o-cresol and m- and p-cresols had the same detection levels. The numbers for o-cresol and m- plus p-cresol promulgated in today's rule were calculated with the same detection limit, as justified by the data review, and the same recovery factor. The resulting identical treatment standards reflect the fact that incineration treats both of these isomer groups to the same level, within the existing analytical constraints.

iii. Use of Alternative Treatment Technologies to Combustion

In establishing numerical treatment standards, the Agency allows the use of any technology (other than impermissible dilution) to comply with the limits. Some previous standards, namely those for petroleum refining wastes, were based on combustion as well as thermal desorption and solvent extraction. Under UTS, organic nonwastewater standards are based on and achievable by combustion. As for other technologies, EPA assessed whether the changes in limits disrupted commitments made to use these other technologies. With regard to thermal desorption, EPA examined comments on the proposed levels by three 'vendors of thermal desorption units (Seaview Thermal Systems (STS), Separation and Recovery Systems, Inc. (SRS), and Ecova (formerly Waste Tech Services)), BDAT Background Development Documents for treatment standards applicable to petroleum wastes, the Marathon delisting petition, and other available literature.

These data demonstrate the achievability of UTS by thermal

desorption for petroleum refining wastes. This was an expected result, given the comments on the Phase I LDR rule which addressed F037 and F038 petroleum refining wastes. In these comments, a thermal desorption company called for limits lower than today's UTS limits (these data reflected lower detection levels, not necessarily better treatment than today's UTS). Also important in the use of thermal desorption are the operating conditions: raising the temperature, and/or the detention time increases the amount of hazardous organic constituents desorbed.

As for solvent extraction, the data used for development of the K048–K052 treatment standards achieved UTS levels for about half of the demonstration runs. Operating conditions, such as solvent selection, solvent to waste ratios, detention time, and number of treatment passes significantly affect treatment results, and the agency believes these parameters can be adjusted to comply with the UTS. There may, however, be other factors which result in this technology not being selected, and based on information available to the Agency, no petroleum refining facilities are utilizing solvent extraction.

EPA requested comments on the achievability of the proposed UTS for petroleum refining wastes when treated via noncombustion technologies. (See 58 FR 48106–48107.) EPA also requested comments on whether the industry has invested in non-combustion technologies, including those designated as BDAT in previous rules that cannot meet the UTS. In particular, EPA requested information on the type of treatment, performance data, and an explanation of why existing treatment could not be adjusted and operated more efficiently to comply with the UTS. EPA also pointed out it was willing to revise the proposed UTS, if data indicated that appropriate noncombustion technologies could achieve slightly higher levels than those proposed for UTS.

Only one commenter, Valero, Inc., submitted comments with regard to a contractual agreement for the construction of a full scale bioslurry reactor and data from a bench scale treatability study. None of the other petroleum refining commenters indicated they had invested in noncombustion technologies. Valero, Inc., and two remediation companies, Retec Technologies and OHM Corporation, submitted data on biotreatment of organic constituents. They reported treatment efficiencies from 40 to 60 percent for some PNAs and questioned whether the proposed treatment standards can be routinely achieved by biotreatment technologies. EPA does not generally consider such treatment efficiencies adequate for organic constituents. As indicated previously, facilities can use any technology other than impermissible dilution to comply with the treatment standards. If design and operating conditions can be adjusted to meet the limits, this could be full compliance. If not, the technology may still be appropriate for remediation wastes, for which standards are currently being revised in the development of HWIR.

UNIVERSAL TREATMENT STANDARDS FOR ORGANIC HAZARDOUS CONSTITUENTS

Regulated constituent—common name	CAS [1] No.	Nonwastewater standard; concentration in mg/kg [2] unless noted as "mg/l TCLP"
Acenaphthylene	208–96–8	3.4
Acenaphthene	83–32–9	3.4
Acetone	67–64–1	160
Acetonitrile	75–05–8	1.8
Acetophenone	96–86–2	9.7
2-Acetylaminofluorene	53–96–3	140
Acrolein	107–02–8	NA
Acrylamide	79–06–1	23
Acrylonitrile	107–13–1	84
Aldrin	309–00–2	0.066
4-Aminobiphenyl	92–67–1	NA
Aniline	62–53–3	14
Anthracene	120–12–7	3.4
Aramite	140–57–8	NA
alpha-BHC	319–84–6	0.066
beta-BHC	319–85–7	0.066
delta-BHC	319–86–8	0.066
gamma-BHC	58–89–9	0.066
Benzene	71–43–2	10
Benz(a)anthracene	56–55–3	3.4
Benzal chloride	98–87–3	6.0
Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205–99–2	6.8
Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207–08–9	6.8
Benzo(g,h,i)perylene	191–24–2	1.8
Benzo(a)pyrene	50–32–8	3.4
Bromodichloromethane	75–27–4	15
Methyl bromide (Bromomethane)	74–83–9	15
4-Bromophenyl phenyl ether	101–55–3	15
n-Butyl alcohol	71–36–3	2.6
Butyl benzyl phthalate	85–68–7	28
2-sec-Butyl-4,6-dinitrophenol (Dinoseb)	88–85–7	2.5
Carbon disulfide	75–15–0	[3]
Carbon tetrachloride	56–23–5	6.0
Chlordane (alpha and gamma isomers)	57–74–9	0.26
p-Chloroaniline	106–47–8	16
Chlorobenzene	108–90–7	6.0

UNIVERSAL TREATMENT STANDARDS FOR ORGANIC HAZARDOUS CONSTITUENTS—Continued

Regulated constituent—common name	CAS [1] No.	Nonwastewater standard; concentration in mg/kg [2] unless noted as "mg/l TCLP"
Chlorobenzilate	510–15–6	NA
2-Chloro-1,3-butadiene	126–99–8	0.28
Chlorodibromomethane	124–48–1	15
Chloroethane	75–00–3	6.0
bis(2-Chloroethoxy)methane	111–91–1	7.2
bis(2-Chloroethyl)ether	111–44–4	6.0
Chloroform	67–66–3	6.0
bis(2-Chloroisopropyl)ether	108–60–1	7.2
p-Chloro-m-cresol	59–50–7	14
2-Chloroethyl vinyl ether	110–75–8	NA
Chloromethane (Methyl chloride)	74–87–3	30
2-Chloronaphthalene	91–8–7	5.6
2-Chlorophenol	95–57–8	5.7
3-Chloropropylene	107–05–1	30
Chrysene	218–01–9	3.4
o-Cresol	95–48–7	5.6
m-Cresol (difficult to distinguish from p-cresol)	108–39–4	5.6
p-Cresol (difficult to distinguish from m-cresol)	106–44–5	5.6
Cyclohexanone	108–94–1	[4]
1,2–Dibromo-3-chloropropane	96–12–8	15
Ethylene dibromide (1,2-Dibromoethane)	106–93–4	15
Dibromomethane	74–95–3	15
2,4-D (2,4-Dichlorophenoxyacetic acid)	94–75–7	10
o,p'-DDD	53–19–0	0.087
p,p'-DDD	72–54–8	0.087
o,p'-DDE	3424–82–6	0.087
p,p'-DDE	72–55–9	0.087
o,p'-DDT	789–02–6	0.087
p,p'-DDT	50–29–3	0.087
Dibenz (a,h) anthracene	53–70–3	8.2
Dibenz (a,e) pyrene	192–65–4	NA
m-Dichlorobenzene	541–73–1	6.0
o-Dichlorobenzene	95–50–1	6.0
p-Dichlorobenzene	106–46–7	6.0
Dichlorodifluoromethane	75–71–8	7.2
1,1-Dichloroethane	75–34–3	6.0
1,2-Dichloroethane	107–06–2	6.0
1,1-Dichloroethylene	75–35–4	6.0
trans-1,2-Dichloroethylene	156–60–5	30
2,4-Dichlorophenol	120–83–2	14
2,6-Dichlorophenol	87–65–0	14
1,2-Dichloropropane	78–87–5	18
cis-1,3-Dichloropropylene	10061–01–5	18
trans-1,3-Dichloropropylene	10061–02–6	18
Dieldrin	60–57–1	0.13
Diethyl phthalate	84–66–2	28
2-4-Dimethyl phenol	105–67–9	14
Dimethyl phthalate	131–11–3	28
Di-n-butyl phthalate	84–74–2	28
1,4-Dinitrobenzene	100–25–4	2.3
4,6-Dinitro-o-cresol	534–52–1	160
2,4-Dinitrophenol	51–28–5	160
2,4-Dinitrotoluene	121–14–2	140
2,6-Dinitrotoluene	606–20–2	28
Di-n-octyl phthalate	117–84–0	28
p-Dimethylaminoazobenzene	60–11–7	NA
Di-n-propylnitrosamine	621–64–7	14
1,4-Dioxane	123–91–1	170
Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122–39–4	13
Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86–30–6	13
1,2-Diphenylhydrazine	122–66–7	NA
Disulfoton	298–04–4	6.2
Endosulfan I	939–98–8	0.066
Endosulfan II	33213–6–5	0.13
Endosulfan sulfate	1–31–07–8	0.13
Endrin	72–20–8	0.13
Endrin aldehyde	7421–93–4	0.13
Ethyl acetate	141–78–6	33

UNIVERSAL TREATMENT STANDARDS FOR ORGANIC HAZARDOUS CONSTITUENTS—Continued

Regulated constituent—common name	CAS [1] No.	Nonwastewater standard; concentration in mg/kg [2] unless noted as "mg/l TCLP"
Ethyl cyanide (Propanenitrile)	107–12–0	360
Ethyl benzene	100–41–4	10
Ethyl ether	60–29–7	160
bis (2-Ethylhexyl) phthalate	117–81–7	28
Ethyl methacrylate	97–63–2	160
Ethylene oxide	75–21–8	NA
Famphur	52–85–7	15
Fluoranthene	206–44–0	3.4
Fluorene	86–73–7	3.4
Heptachlor	76–44–8	0.066
Heptachlor epoxide	1024–57–3	0.066
Hexachlorobenzene	118–74–1	10
Hexachlorobutadiene	87–68–3	5.6
Hexachlorocyclopentadiene	77–47–4	2.4
HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.001
HxCDFs (All Hexachlorodibenzofurans)	NA	0.001
Hexachloroethane	67–72–1	30
Hexachloropropylene	1888–71–7	30
Indeno(1,2,3-c,d)pyrene	193–39–5	3.4
Iodomethane	74–88–4	65
Isobutyl alcohol	78–83–1	170
Isodrin	465–73–6	0.066
Isosafrole	120–58–1	2.6
Kepone	143–50–8	0.13
Methacrylonitrile	126–98–7	84
Methanol	67–56–1	([5])
Methapyrilene	91–80–5	1.5
Methoxychlor	72–43–5	0.18
3-Methylcholanthrene	56–49–5	15
4,4-Methylene bis(2-chloroaniline)	101–14–4	30
Methylene chloride	75–09–2	30
Methyl ethyl ketone	78–93–3	36
Methyl isobutyl ketone	108–10–1	33
Methyl methacrylate	80–62–6	160
Methyl methansulfonate	66–27–3	NA
Methyl parathion	298–00–0	4.6
Naphthalene	91–20–3	5.6
2-Naphthylamine	91–59–8	NA
o-Nitroaniline	88–74–4	14
p-Nitroaniline	100–01–6	28
Nitrobenzene	98–95–3	14
5-Nitro-o-toluidine	99–55–8	28
o-Nitrophenol	88–75–5	13
p-Nitrophenol	100–02–7	29
N-Nitrosodiethylamine	55–18–5	28
N-Nitrosodimethylamine	62–75–9	2.3
N-Nitroso-di-n-butylamine	924–16–3	17
N-Nitrosomethylethylamine	10595–95–6	2.3
N-Nitrosomorpholine	59–89–2	2.3
N-Nitrosopiperidine	100–75–4	35
N-Nitrosopyrrolidine	930–55–2	35
Parathion	56–38–2	4.6
Total PCBs (sum of all PCB isomers, or all Arochlors)	1336–36–3	10
Pentachlorobenzene	608–93–5	10
PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.001
PeCDFs (All Pentachlorodibenzofurans)	NA	0.001
Pentachloroethane	76–01–7	6.0
Pentachloronitrobenzene	82–68–8	4.8
Pentachlorophenol	87–86–5	7.4
Phenacetin	62–44–2	16
Phenanthrene	85–01–8	5.6
Phenol	108–95–2	6.2
Phorate	298–02–2	4.6
Phthalic acid	100–21–0	28
Phthalic anhydride	85–44–9	28
Pronamide	23950–58–5	1.5
Pyrene	129–00–0	8.2
Pyridine	110–86–1	16

UNIVERSAL TREATMENT STANDARDS FOR ORGANIC HAZARDOUS CONSTITUENTS—Continued

Regulated constituent—common name	CAS[1] No.	Nonwastewater standard; concentration in mg/kg[2] unless noted as "mg/l TCLP"
Safrole	94–59–7	22
Silvex(2,4,5-TP)	93–72–1	7.9
2,4,5-T(2,4,5-Trichlorophenoxyacetic acid)	93–76–5	7.9
1,2,4,5-Tetrachlorobenzene	95–94–3	14
TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.001
TCDFs (All Tetrachlorodibenzofurans)	NA	0.001
1,1,1,2-Tetrachloroethane	630–20–6	6.0
1,1,2,2-Tetrachloroethane	79–34–6	6.0
Tetrachloroethylene	127–18–4	6.0
2,3,4,6-Tetrachlorophenol	58–90–2	7.4
Toluene	108–88–3	10
Toxaphene	8001–35–2	2.6
Bormoform (Tribromomethane)	75–25–2	15
1,2,4-Trichlorobenzene	120–82–1	19
1,1,1-Trichloroethane	71–55–6	6.0
1,1,2-Trichloroethane	79–00–5	6.0
Trichloroethylene	79–01–6	6.0
Trichloromonofluoromethane	75–69–4	30
2,4,5-Trichlorophenol	95–95–4	7.4
2,4,6-Trichlorophenol	88–06–2	7.4
1,2,3-Trichloropropane	96–18–4	30
1,1,2-Trichloro-1,2,2,-trifluoroethane	76–13–1	30
tris-(2,3-Dibromopropyl) phosphate	126–72–7	0.10
Vinyl chloride	75–01–4	6.0
Xylenes-mixed isomers (sum of o-, m-, p-xylene concentrations)	1330–20–7	30

[1] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with it's salts and/or esters, the CAS number is given for the parent compound only.
[2] All concentration standards for nonwastewaters are based on analysis of grab samples.
[3] 4.8 mg/l TCLP.
[4] 0.75 mg/l TCLP.
[5] 0.75 mg/l TCLP.
Note: NA means not applicable.

c. Organics—Wastewaters

i. The Universal Treatment Standards Promulgated in Today's Rule

The set of wastewater UTS proposed in September 1993 was virtually identical to the F039 wastewater standards promulgated in the Third Third Rule. Applying UTS to F- and K-listed wastes changes organic constituent wastewater standards in a handful of codes (F024, K001, K011/13/14, K015, K040, K038, K036, K037, K060, K099, K103/104, and U051). Commenters raised specific concerns with three of the organic wastewater treatment standards, and EPA is revising the proposed standards for two of the three constituents: the wastewater standard proposed for carbon disulfide will change from 0.014 mg/l to 3.8 mg/l, and the proposed wastewater universal treatment standard for 1,4-dioxane has been withdrawn. Changes to the treatment standards for these two constituents is explained in the following section. The third constituent was acetonitrile. Monsanto, Dupont, Cytec and other acrylonitrile producers, together with the Chemical Manufacturing Association's Acrylonitrile Group, objected to EPA extending the UTS to acrylonitrile production wastes K011, K013 and K014. Their comments stated that the acetonitrile wastewater UTS was unachievably low in acrylonitrile wastes. The Agency is promulgating an acetonitrile UTS of 5.6 based on steam stripping performance data. This level also appears achievable by WAO (wet air oxidation) followed by PACT@ (a combination of powdered activated carbon treatment and activated sludge).

ii. Treatment Standard Modification Made in Response to Comments

Carbon Disulfide. In response to data submitted by the Chemical Manufacturer's Association's Carbon Disulfide Task Force, EPA is promulgating a treatment standard of 3.8 mg/l based on data submitted by several facilities which generate high concentrations of carbon disulfide in wastewaters. The proposed wastewater treatment standard (0.014 mg/l) was based on one data point for biological treatment. After receiving substantially more treatment data representative of more significant influent concentrations, EPA is promulgating a carbon disulfide wastewater number of 3.8 mg/l, based on the performance of activated sludge at one of the facilities generating carbon disulfide.

1,4-Dioxane. Eastman Chemical reported that serious analytical problems, namely wide variation in detection limits, precluded reliable and accurate quantification of 1,4-dioxane. After reviewing detection limit data, EPA decided to withdraw the wastewater treatment standard for 1,4-dioxane pending technical resolution in a later rule. This decision changes the treatment standard for U108 (1,4-dioxane) wastewaters. Formerly the wastewater treatment standard was 0.12 mg/l; today's rule promulgates a method of treatment as a standard for U108 wastewaters, namely wet air oxidation or chemical oxidation followed by carbon adsorption or incineration.

UNIVERSAL TREATMENT STANDARDS FOR ORGANICS

Regulated constituent—Common name	CAS [1] No.	Wastewater standard Concentration in mg/l [2]
Acenaphthylene	208–96–8	0.059
Acenaphthene	83–32–9	0.059
Acetone	67–64–1	0.28
Acetonitrile	75–05–8	5.6
Acetophenone	96–86–2	0.010
2-Acetylaminofluorene	53–96–3	0.059
Acrolein	107–02–8	0.29
Acrylamide	79–06–1	19
Acrylonitrile	107–13–1	0.24
Aldrin	309–00–2	0.021
4-Aminobiphenyl	92–67–1	0.13
Aniline	62–53–3	0.81
Anthracene	120–12–7	0.059
Aramite	140–57–8	0.36
alpha-BHC	319–84–6	0.00014
beta-BHC	319–85–7	0.00014
delta-BHC	319–86–8	0.023
gamma-BHC	58–89–9	0.0017
Benzene	71–43–2	0.14
Benz(a)anthracene	56–55–3	0.059
Benzal chloride	98–87–3	0.055
Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205–99–2	0.11
Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207–08–9	0.11
Benzo(g,h,i)perylene	191–24–2	0.0055
Benzo(a)pyrene	50–32–8	0.061
Bromodichloromethane	75–27–4	0.35
Methyl bromide (Bromomethane)	74–83–9	0.11
4-Bromophenyl phenyl ether	101–55–3	0.055
n-Butyl alcohol	71–36–3	5.6
Butyl benzyl phthalate	85–68–7	0.017
2-sec-Butyl-4,6-dinitrophenol (Dinoseb)	88–85–7	0.066
Carbon disulfide	75–15	03.8
Carbon tetrachloride	56–23–5	0.057
Chlordane (alpha and gamma isomers)	57–74–9	0.0033
p-Chloroaniline	106–47–8	0.46
Chlorobenzene	108–90–7	0.057
Chlorobenzilate	510–15–6	0.10
2-Chloro-1,3-butadiene	126–99–8	0.057
Chlorodibromomethane	124–48–1	0.057
Chloroethane	75–00–3	0.27
bis(2-Chloroethoxy)methane	111–91–1	0.036
bis(2-Chloroethyl)ether	111–44–4	0.033
Chloroform	67–66–3	0.046
bis(2-Chloroisopropyl)ether	108–60–1	0.055
p-Chloro-m-cresol	59–50–7	0.018
2-Chloroethyl vinyl ether	110–75–8	0.062
Chloromethane (Methyl chloride)	74–87–3	0.19
2-Chloronaphthalene	91–8–7	0.055
2-Chlorophenol	95–57–8	0.044
3-Chloropropylene	107–05–1	0.036
Chrysene	218–01–9	0.059
o-Cresol	95–48–7	0.11
m-Cresol (difficult to distinguish from p-cresol)	108–39–4	0.77
p-Cresol (difficult to distinguish from m-cresol)	106–44–5	0.77
Cyclohexanone	108–94–1	0.36
1,2-Dibromo-3-chloropropane	96–12–8	0.11
Ethylene dibromide (1,2-Dibromoethane)	106–93–4	0.028
Dibromomethane	74–95–3	0.11
2,4-D (2,4-Dichlorophenoxyacetic acid)	94–75–7	0.72
o,p'-DDD	53–19–0	0.023
p,p'-DDD	72–54–8	0.023
o,p'-DDE	3424–82–6	0.031
p,p'-DDE	72–55–9	0.031
o,p'-DDT	789–02–6	0.0039
p,p'-DDT	50–29–3	0.0039
Dibenz(a,h)anthracene	53–70–3	0.055
Dibenz(a,e)pyrene	192–65–4	0.061
m-Dichlorobenzene	541–73–1	0.036
o-Dichlorobenzene	95–50–1	0.088
p-Dichlorobenzene	106–46–7	0.090

UNIVERSAL TREATMENT STANDARDS FOR ORGANICS—Continued

Regulated constituent—Common name	CAS[1] No.	Wastewater standard Concentration in mg/l[2]
Dichlorodifluoromethane	75–71–8	0.23
1,1-Dichloroethane	75–34–3	0.059
1,2-Dichloroethane	107–06–2	0.21
1,1-Dichloroethylene	75–35–4	0.025
trans-1,2-Dichloroethylene	156–60–5	0.054
2,4-Dichlorophenol	120–83–2	0.044
2,6-Dichlorophenol	87–65–0	0.044
1,2-Dichloropropane	78–87–5	0.85
cis-1,3-Dichloropropylene	10061–01–5	0.036
trans-1,3-Dichloropropylene	10061–02–6	0.036
Dieldrin	60–57–1	0.017
Diethyl phthalate	84–66–2	0.20
2-4-Dimethyl phenol	105–67–9	0.036
Dimethyl phthalate	131–11–3	0.047
Di-n-butyl phthalate	84–74–2	0.057
1,4-Dinitrobenzene	100–25–4	0.32
4,6-Dinitro-o-cresol	534–52–1	0.28
2,4-Dinitrophenol	51–28–5	0.12
2,4-Dinitrotoluene	121–14–2	0.32
2,6-Dinitrotoluene	606–20–2	0.55
Di-n-octyl phthalate	117–84–0	0.017
p-Dimethylaminoazobenzene	60–11–7	0.13
Di-n-propylnitrosamine	621–64–7	0.40
Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122–39–4	0.92
Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86–30–6	0.92
1,2-Diphenylhydrazine	122–66–7	0.087
Disulfoton	298–04–4	0.017
Endosulfan I	939–98–8	0.023
Endosulfan II	33213–6–5	0.029
Endosulfan sulfate	1–31–07–8	0.029
Endrin	72–20–8	0.0028
Endrin aldehyde	7421–93–4	0.025
Ethyl acetate	141–78–6	0.34
Ethyl cyanide (Propanenitrile)	107–12–0	0.24
Ethyl benzene	100–41–4	0.057
Ethyl ether	60–29–7	0.12
bis(2-Ethylhexyl) phthalate	117–81–7	0.28
Ethyl methacrylate	97–63–2	0.14
Ethylene oxide	75–21–8	0.12
Famphur	52–85–7	0.017
Fluoranthene	206–44–0	0.068
Fluorene	86–73–7	0.059
Heptachlor	76–44–8	0.0012
Heptachlor epoxide	1024–57–3	0.016
Hexachlorobenzene	118–74–1	0.055
Hexachlorobutadiene	87–68–3	0.055
Hexachlorocyclopentadiene	77–47–4	0.057
HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063
HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063
Hexachloroethane	67–72–1	0.055
Hexachloropropylene	1888–71–7	0.035
Indeno (1,2,3-c,d) pyrene	193–39–5	0.0055
Iodomethane	74–88–4	0.19
Isobutyl alcohol	78–83–1	5.6
Isodrin	465–73–6	0.021
Isosafrole	120–58–1	0.081
Kepone	143–50–8	0.0011
Methacrylonitrile	126–98–7	0.24
Methanol	67–56	15.6
Methapyrilene	91–80–5	0.081
Methoxychlor	72–43–5	0.25
3-Methylcholanthrene	56–49–5	0.0055
4,4-Methylene bis(2-chloroaniline)	101–14–4	0.50
Methylene chloride	75–09–2	0.089
Methyl ethyl ketone	78–93–3	0.28
Methyl isobutyl ketone	108–10–1	0.14
Methyl methacrylate	80–62–6	0.14
Methyl methansulfonate	66–27–3	0.018
Methyl parathion	298–00–0	0.014
Naphthalene	91–20–3	0.059

UNIVERSAL TREATMENT STANDARDS FOR ORGANICS—Continued

Regulated constituent—Common name	CAS [1] No.	Wastewater standard Concentration in mg/l [2]
2-Naphthylamine	91–59–8	0.52
o-Nitroaniline	88–74–4	0.27
p-Nitroaniline	100–01–6	0.028
Nitrobenzene	98–95–3	0.068
5-Nitro-o-toluidine	99–55–8	0.32
o-Nitrophenol	88–75–5	0.028
p-Nitrophenol	100–02–7	0.12
N-Nitrosodiethylamine	55–18–5	0.40
N-Nitrosodimethylamine	62–75–9	0.40
N-Nitroso-di-n-butylamine	924–16–3	0.40
N-Nitrosomethylethylamine	10595–95–6	0.40
N-Nitrosomorpholine	59–89–2	0.40
N-Nitrosopiperidine	100–75–4	0.013
N-Nitrosopyrrolidine	930–55–2	0.013
Parathion	56–38–2	0.014
Total PCBs (sum of all PCB isomers, or all Arochlors)	1336–36–3	0.10
Pentachlorobenzene	608–93–5	0.055
PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063
PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035
Pentachloroethane	76–01–7	0.055
Pentachloronitrobenzene	82–68–8	0.055
Pentachlorophenol	87–86–5	0.089
Phenacetin	62–44–2	0.081
Phenanthrene	85–01–8	0.059
Phenol	108–95–2	0.039
Phorate	298–02–2	0.021
Phthalic acid	100–21–0	0.055
Phthalic anhydride	85–44–9	0.055
Pronamide	23950–58–5	0.093
Pyrene	129–00–0	0.067
Pyridine	110–86–1	0.014
Safrole	94–59–7	0.081
Silvex (2,4,5-TP)	93–72–1	0.72
2,4,5-T (2,4,5-Trichlorophenoxyacetic acid)	93–76–5	0.72
1,2,4,5-Tetrachlorobenzene	95–94–3	0.055
TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063
TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063
1,1,1,2-Tetrachloroethane	630–20–6	0.057
1,1,2,2-Tetrachloroethane	79–34–6	0.057
Tetrachloroethylene	127–18–4	0.056
2,3,4,6-Tetrachlorophenol	58–90–2	0.030
Toluene	108–88–3	0.080
Toxaphene	8001–35–2	0.0095
Bromoform (Tribromomethane)	75–25–2	0.63
1,2,4-Trichlorobenzene	120–82–1	0.055
1,1,1-Trichloroethane	71–55–6	0.054
1,1,2-Trichloroethane	79–00–5	0.054
Trichloroethylene	79–01–6	0.054
Trichloromonofluoromethane	75–69–4	0.020
2,4,5-Trichlorophenol	95–95–4	0.18
2,4,6-Trichlorophenol	88–06–2	0.035
1,2,3-Trichloropropane	96–18–4	0.85
1,1,2-Trichloro-1,2,2-trifluoroethane	76–13–1	0.057
tris-(2,3-Dibromopropyl) phosphate	126–72–7	0.11
Vinyl chloride	75–01–4	0.27
Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330–20–7	0.32

[1] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.
[2] Concentration standards for wastewaters are expressed in mg/l are based on analysis of composite samples.
Note: NA means not applicable.

5. Universal Treatment Standards for Metal Hazardous Constituents

EPA is promulgating UTS for both the nonwastewater and wastewater forms of each of the 14 BDAT list metal constituents. The standards are found in the table "Universal Treatment Standards for Metal Constituents" at the end of this preamble section. These UTS will replace the existing metal constituent treatment standards for all listed wastes, and will constitute applicable levels for underlying hazardous metal constituents in ignitable, corrosive and TC organic wastes. They do not apply to wastes exhibiting the toxicity characteristic due to metal constituents, i.e., waste codes

D004–D012, nor do they replace the treatment standards promulgated in the Third Third rule for EP metals. Wastecodes D004–D012 will be addressed in an upcoming rulemaking.

a. Nonwastewaters

The nonwastewater UTS for 12 of the 14 metal constituents are based on the performance of high temperature metal recovery (HTMR) or stabilization. The remaining two metals are arsenic for which the standard is based on vitrification, and mercury, which standard requires recovery by roasting or retorting for certain highly concentrated mercury wastes. As always, when the Agency develops concentration-based treatment standards, the use of other technologies to achieve those standards is allowed.

The following table presents a comparison of the previously promulgated standards with the UTS.

COMPARISON OF UTS NONWASTEWATER TCLP CONCENTRATIONS VERSUS PREVIOUS STANDARDS FOR METALS

	Final UTS NWW standards (TCLP)	Previous standards being replaced	
		Old level	Waste codes
Antimony	2.1	2.1	K061
		0.23	K021, F039
Arsenic	5.0	5.6	K031, K084, K101, K102, P010, P011, P036, P038, U136
		5.0	F039
		0.055	K061
Barium	7.6	52	F039, P013
		7.6	K061
Beryllium	0.014	0.014	K061
Cadmium	0.19	0.19	K061
		0.14	K069
		0.066	F006, F007, F008, F009, F011, F012, F039, K100
Chromium	0.86	5.2	F006, F007, F008, F009, F011, F012, F019, F039, K006 (hydrated), K061, K100
		1.7	K015, K048, K049, K050, K051, K052
		0.33	K061
		0.094	K002, K003, K004, K005, K006, K007, K008, K062, K086, U032
		0.073	K028
Lead	0.37	0.51	F006, F007, F008, F009, F011, F012, F039, K001, K087, K100, U051, U144, U145, U146, P110
		0.37	K002, K003, K004, K005, K006, K007, K008, K061, K062, K086
		0.24	K069
		0.18	K046
		0.021	K028
Mercury	0.20 for retort residues 0.025 for other residues.	0.20	K106, U151, P065, P092 (for RMERC residues)
		0.025	K071, K106, U151, P065, P092 (low mercury wastes), F039
		0.009	K061
Nickel	5.0	5.0	K061
		0.32	F006, F007, F008, F009, F011, F012, F039, K115, K061 (stabilization)
		0.2	K015, K048, K049, K050, K051, K052
		0.088	K028, K083
Selenium	0.16	5.7	F039, P103, P114, U204, U205
		0.16	K061
Silver	0.30	0.30	K061
		0.072	F006, F007, F008, F009, F011, F012, P099, P104
Thallium	0.078	0.078	K061
Vanadium	0.23	0.23	K061
Zinc	5.3	5.3	K061

Note: Constituents are actually regulated only if the treatment standard specifically requires it (for listed wastes, or constituents are reasonably expected to be present (underlying hazardous constituents in characteristic wastes).

Commenters objected to the proposed levels and provided treatment data for only two metal limits, chromium and mercury. The Agency revised the proposed treatment standards for chromium and mercury as described later in this section. For the other UTS metal constituents the Agency promulgated standards as proposed.

For four of these metals beryllium, thallium, vanadium and zinc, the previous standards limited the metal at one level, which was proposed and promulgated for UTS.

For four other metals, antimony, cadmium, nickel and silver, the Agency proposed and promulgated the UTS level at the highest of the previous standards. This occurred based on the best data for the most difficult to treat wastes. Commenters did not submit new data supporting lower limits for these constituents. While the limits for some waste codes are raised, EPA considered the following factors:

(1) A broader assessment of the treatment data;

(2) Some of the low/previous metal standards simply reflected low levels in the untreated wastes;

(3) Regulation of other metals for a waste code, namely those that are present in significantly high concentrations, will control design and operations of the treatment technology.

For the remaining four metals, arsenic, barium, lead and selenium, the Agency did not propose or promulgate the UTS at the highest previous standard. Commenters did not submit data on these metals. The justification

for rejecting lower levels are the same as those presented for antimony, cadmium, nickel and silver in the preceeding discussion. For these metals, EPA did not choose the highest previous standard; rather, the standard for the most difficult to treat waste was selected and it achieved a lower standard than the highest previous standard.

In addition to the above consideration, the Agency considered matrix effects. In setting the nonwastewater metal limits, EPA has examined the most difficult to treat wastes; therefore, if a matrix relationship exists, other wastes should more easily meet the limits. If there exists a waste that can not meet the limits, the Agency has a treatability variance process to address those instances. It appears that HTMR is matrix independent, consistently achieving the same level of treatment performance as measured in the residuals, regardless of the influent matrix composition. With regard to matrix effects on stabilization, adjustments to the type and quantity of stabilizing agents can greatly compensate for matrix effects.

The UTS standard for chromium (Total) was proposed to be 0.33 mg/l in the TCLP extract based upon the K061–HTMR treatment standard data. One commenter (Occidental Chemical), objected to the proposed limits and supplied stabilization data for chromium. They indicated through 85 data points that they could achieve a level of 0.58 mg/kg. The Agency evaluated treatability data from various sources, including Occidental Chemical and previously promulgated waste codes. These evaluations compared analyses of performance data between untreated and treated concentrations of metal waste. From this treatability data the Agency selected the most difficult to treat waste. It was determined that the waste criteria selected was submitted by Cyanokem for F006 during the promulgation of the Third Third rule (June 1, 1990). This waste was a composition of stripping liquids, plating operations, pelletizing operations, and clean out wastes from plating tanks. The data sets involving the most difficult to treat waste were used to calculate the limit of 0.86 mg/l TCLP. The other data sets, including those from the comments, generally achieved the 0.86 mg/l TCLP. The treatment results that did not meet the levels may be due to treatment being designed to only meet the characteristic levels. It is the Agency's belief that with the use of a more effective stabilization process, a lower level could be achieved, as demonstrated by the fact that a more difficult to treat waste attained the level of 0.86 mg/l TCLP. Therefore, the Agency is promulgating the treatment standard of 0.86 mg/l TCLP.

EPA proposed UTS for low mercury subcategory nonwastewaters (containing less than 260 mg/kg total mercury) at 0.009 mg/l TCLP. Many commenters expressed concern over this standard. EPA has reconsidered the proposed UTS for mercury and is promulgating standards as follows: 0.200 mg/l TCLP for low subcategory retort residues, and 0.025 mg/l TCLP for other low subcategory nonwastewaters. (The existing treatment standard for high subcategory mercury nonwastewaters (concentration greater than 260 mg/kg) is already RMERC, i.e., recovery of mercury by retorting or roasting. This treatment standard is unaffected by today's rule.) Comments and EPA's responses are summarized below.

Several commenters expressed the belief that the current treatment standards for K106, D009, and K071 wastes should remain in effect. These commenters submitted data from the analysis of retorted mercury waste to support the claim that the proposed UTS for mercury is not achievable by retorting, the recognized BDAT for K106 and D009 wastes. These data consisted of total and TCLP analyses of 109 residue samples from retorted K106 and D009 wastes. Although 23 of these samples contained greater than 260 mg/kg total mercury and would therefore require further retorting, of the remaining 86 samples, 18 contained greater than 0.009 mg/l mercury by TCLP, the proposed UTS for mercury nonwastewaters. All 86 samples contained less than 0.15 mg/l mercury by TCLP. These data support the commenters' position that the proposed UTS for mercury is not achievable by properly operated BDAT treatment technology (e.g., RMERC).

Further examination of available data has convinced the Agency that the proposed nonwastewater standard was too low. The basis for the proposed UTS for metal nonwastewaters, which was data from the treatment of K061 by high temperature metal recovery (HTMR), is not appropriate for mercury wastes. K061 waste does not typically contain large quantities of mercury and HTMR facilities do not accept wastes containing high concentrations of mercury. EPA has therefore decided not to promulgate the proposed nonwastewater standards, and instead to apply the existing treatment standards for K071, K106, P065, P092, and U151 as the UTS for mercury nonwastewaters. This is appropriate, since mercury is the most significant constituent in these wastes, and BDAT for these wastes is particularly directed to treating mercury. The Agency continues to believe that the revised limits for mercury and 12 other metal constituents in K061 provide adequate assurance that BDAT will occur for K061. Thus, the universal treatment standards for low subcategory mercury wastes will be 0.20 mg/l mercury by TCLP for retort residue nonwastewaters, and 0.025 mg/l mercury by TCLP for other low subcategory nonwastewaters.

The following table is a compilation of the final metal universal standards for nonwastewaters.

UNIVERSAL TREATMENT STANDARDS FOR METAL[1] HAZARDOUS CONSTITUENTS

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample TCLP (mg/l)
Antimony	2.1
Arsenic	5.0
Barium	7.6
Beryllium	0.014
Cadmium	0.19
Chromium (Total)	0.86
Lead	0.37
Mercury—retort residues	0.20
Mercury—not retort residues	0.025
Nickel	5.0
Selenium	0.16
Silver	0.30
Thallium	0.078
Vanadium	0.23
Zinc	5.3

[1] Treatment standards for cyanide wastes are discussed in the next preamble section.

b. Wastewaters

The metal UTS for wastewaters are based on chemical precipitation as BDAT. Depending on the initial concentration of metal constituents in the wastewater, operating conditions such as retention time, flocculating agents, reagent concentrations such as iron to affect solubility of other metals, and mixing may need to be adjusted to comply with the standards.

The following table presents the UTS metal wastewater limits, and the previous limits. Changes to the proposed metal standards occurred in two areas: use of Office of Water Metal Finishing limits, and an adjustment of the proposed vanadium limit. These changes are explained following the table.

COMPARISON OF UTS WASTEWATER CONCENTRATIONS VERSUS PREVIOUS STANDARDS FOR METALS

	Final UTS	Previous standards	
		Old level	Waste codes
Antimony	1.9	.....	K061
		0.60	K021
		1.9	F039
Arsenic	1.4	0.79	K031, K084, K101, K102, P010, P011, P012, P036, P038, U136
		1.4	F039
			K061
Barium	1.2	1.2	F039, P013
			K061
Beryllium	0.82	0.82	F039, K061
Cadmium	0.69	6.4	K028
		0.20	F039
		0.24	K101, K102
		1.6	F006, K061, K069, K100
Chromium	2.77	0.32	F006, F007, F008, F009, F011, F012, F019, K015, K061, K062, K086, K100, U032
		0.2	F037, F038, K048, K049, K050, K051, K052
		0.37	F039
		0.9	K002, K003, K004, K005, K006, K007, K008
		0.35	F024, K022, K028
Lead	0.69	0.040	F006, F007, F008, F009, F011, F012, K062, U144, U145, U146, P110
		3.4	K002, K003, K004, K005, K006, K007, K008
		0.17	K101, K102
		0.28	F039
		0.51	K061, K069, K100
		0.037	K001, F037, F038, K028, K046, K048, K049, K050, K051, K052, K086, K087, U051
Mercury	0.15	0.030	K071, K106, P065, P092, U151
		0.082	K101, K102
		0.15	F039
Nickel	3.98	0.55	F039
		0.44	F006, F007, F008, F009, F011, F012, K015, K061, K062, P074
		0.32	P073
		0.47	F024, K022, K028, K083, K115
Selenium	0.82	0.82	F039
		1.0	P103, P114, U204, U205
Silver	0.43	0.29	F039, P099, P104
Thallium	1.4	0.14	P113, P114, P115, U214, U215, U216, U217
		1.4	F039
Vanadium	4.3	0.042	F039
		28	P119, P120
Zinc	2.61	1.0	F039

In the proposal, EPA solicited comments on changing the limits for cadmium, chromium, lead, nickel, silver, and zinc to those used in the Office of Water's Metal Finishing Effluent Guidelines. These standards represented a more comprehensive database, addressed many more facilities, and represented the most difficult to treat waste. Although none of the commenters submitted data, they (commenters) supported the use of the Metal Finishing standards as the UTS wastewater treatment numbers. We are adopting the metal wastewater limits used for the Effluent Guidelines for the Metal Finishers Point Source category for cadmium, chromium, lead, nickel, silver and zinc for the reasons outlined above.

The Agency received comments, but no data, that the proposed vanadium limit of 0.042 was unachievably low. At the proposed level, vanadium would be the most stringent regulated metal. With little data supporting the proposed level, the Agency tried to follow up with commenters and other sources to obtain data. Wastewater with significant vanadium is rare, and EPA's efforts yielded limited data supporting a level of 4.3 mg/l. This level is within the range of other metal limits, and is achievable, based on the data availability. While the Agency would have preferred having more data for vanadium, the UTS is set at 4.3 mg/l. If the few facilities that have significant vanadium wastewaters can not meet this limit, EPA's treatability variance process is available. Also, the Agency would be willing to reassess this limit in a future rule, if data are submitted which supports a change in this standard.

For all other metal wastewater UTS—antimony, arsenic, barium, beryllium, mercury, selenium and thallium—EPA is promulgating limits as proposed. The data used for UTS reflect, for each of these metals, the best data available. With the possibility of more wastewaters being treated to comply with LDR standards—particularly characteristic wastewaters that heretofore have been decharacterized and whose underlying hazardous constituents may not have been treated, EPA has made a determined effort in this rulemaking to base treatment standards on the best data available, which data reflects a wide variety of wastewaters. Although the UTS are in some cases higher than existing limits, EPA believes that these existing lower limits, in many cases, reflected low levels of metals in untreated wastes. In addition, wastewater standards, to date, have not had direct effect on many wastes, because most hazardous wastewaters are either treated in tanks and discharged, managed in § 3005(j)(ii) impoundments, injected into Class I hazardous deep wells which have received no-migration variances, or

decharacterized, and so are not subject to these lower standards.

The following table is a compilation of final metal universal treatment standards for wastewaters.

UNIVERSAL TREATMENT STANDARDS FOR METAL[1] HAZARDOUS CONSTITUENTS

[Wastewaters]

Regulated constituent	Maximum for any single grab sample (mg/l)
Antimony	1.9
Arsenic	1.4
Barium	1.2
Beryllium	0.82
Cadmium	0.69
Chromium (Total)	2.77
Lead	0.69
Mercury	0.15
Nickel	3.98
Selenium	0.82
Silver	0.43
Thallium	1.4
Vanadium	4.3
Zinc	2.61

[1] Treatment standards for cyanide wastes are discussed in the next preamble section.

6. Universal Treatment Standards for Cyanide Wastes

For the nonwastewater forms of cyanide wastes, EPA is promulgating the UTS as proposed: 590 mg/kg (total cyanide) and 30 mg/kg (amenable cyanide). For wastewaters, EPA is promulgating the UTS: 1.2 mg/l (total cyanide) and 0.86 mg/l (amenable cyanide). These wastewater standards differ from those that were proposed (see section b of the cyanide UTS discussion below). The cyanide wastewater and nonwastewater UTS are based on the treatment of wastewaters via alkaline chlorination.

EPA is also codifying in 40 CFR 268.40 that compliance with the cyanide nonwastewater UTS requires the use of EPA SW–846, Test Methods 9010 and 9012, along with a specified sample size of 10 grams, and a distillation time of 75 minutes. Most commenters, in particular those from the hazardous waste treatment industry, welcomed and supported this part of EPA's proposal. These kind of provisions eliminate variabilities that can result from the analyses of different sample sizes and distillation times. A detailed discussion of these treatment standards follows.

a. Cyanide Nonwastewaters

EPA proposed three options for cyanide in nonwastewater forms (a standard based on total and amenable cyanide concentrations, a standard based on TCLP concentrations, and a standard that specifies treatment methods) at 58 FR 48104. EPA is promulgating the first option.

EPA is discussing in this preamble only the major comments on the first option. Please see the Response to Comments Document in the docket for this rule for EPA's responses to all the comments received on the proposed three options.

EPA requested comments on its rationale for setting a common cyanide UTS for all nonwastewater forms of cyanide. Two primary issues were emphasized in the proposal: (1) the establishment of a cyanide UTS that is less stringent for wastes that contain little to no cyanide; and, (2) standardized sample size and distillation time for compliance monitoring.

EPA believes that by basing a universal treatment on the cyanide matrix that is most difficult to treat, the universal treatment standard will indeed be uniformly achievable. EPA has determined that electroplating wastes with high concentrations of iron represent the most difficult to treat of all the cyanide wastes. The available performance data for treating electroplating wastes support the establishment of a UTS of 590 mg/kg (total cyanide) and 30 mg/kg (amenable cyanide).

EPA noted that although other cyanide wastes were required to meet lower treatment standards, the establishment of this higher UTS was not likely to discourage effective treatment of these other wastes. Examples of the other wastes of concern include multi-source leachate, pigments, petroleum, coking, ink solvents and organo-nitrogen wastes. These wastes generally have very little cyanide in the untreated waste, have cyanide along with organic constituents which are routinely incinerated, or have cyanide in a free form which is easier to treat by conventional treatment methods (alkaline chlorination). Because these wastes are routinely treated by incineration or a cyanide destruction technology, EPA believes further subcategorization of the cyanide UTS standard is not warranted at this time. (Put another way, the Agency does not believe as a practical matter that more cyanide will be land disposed as a result of UTS, and therefore that the interest in simplified standards warrants against further subcategorization of cyanide wastes.)

The majority of the commenters supported EPA's proposed rationale for developing a cyanide UTS and believe EPA's proposed approach is appropriate for setting UTS. Two commenters, however, urged EPA to withdraw the proposed UTS and to promulgate instead a lower cyanide UTS, as described below.

The first commenter believes that EPA should set two categories of cyanide UTS: (1) organic, which would include all those cyanide wastes with regulated organics; and, (2) inorganic, which include all cyanide wastes with regulated metals. For organics, they suggested a UTS of 30 mg/kg (total cyanide) and 1.8 mg/kg (amenable cyanide). For inorganics, the commenter suggested a UTS of 400 mg/kg (total cyanide) based on rejecting three data points used to calculate the 590 mg/kg limits.

The other commenter believes that it is inappropriate for EPA to raise the standards for all nonwastewater forms of cyanide wastes. They said that existing treatment technologies can treat cyanide wastes to levels below the proposed UTS, and they asked EPA to promulgate lower cyanide levels such as those promulgated for nonwastewater forms of F011 and F012.

EPA is not persuaded by these comments. First, a separate lower treatment standard for cyanide in organic wastes is currently unnecessary because combustion of these wastes to comply with organic treatment standards effectively destroys cyanides. Second, EPA believes that the three data points queried in CyanoKem's comment are in fact representative. None of these three data points fail a statistical Outlier test. Furthermore, the description of the design and operating conditions make it appear that treatment was conducted properly. Third, the limit for F011 and F012 (which had a treatment standard for cyanide below the UTS) has not been previously subject to the 1 hour and 15 minute distillation time and 10 gram sample requirements, which can greatly influence results and are required conditions for the UTS.

CyanoKem's comment, in fact, amounts to a request that EPA reopen the technology basis for the cyanide standard, an issue not opened for public comment. The treatment standards for cyanide are based on performance of alkaline chlorination technology. 54 FR at 26610–611 (June 23, 1989). CyanoKem has upgraded that technology with certain proprietary modifications. 56 FR at 12355 (March 25, 1991). EPA has already indicated that this adapted technology is not, and need not serve as the basis for the treatment standard. *Id.*

In any case, EPA does not believe that this is an appropriate time to undertake

major changes to the cyanide standards. This is because the cyanide analytic method, although improved by the changes in this rule which are the best available at the present time, continues to have shortcomings. EPA is working to develop a different analytic method. It may be that after the new method is developed, further investigation of cyanide standards will be warranted.

UNIVERSAL TREATMENT STANDARDS FOR CYANIDE [1]

[Nonwastewaters]

Regulated constituent	Maximum for any single composite sample (mg/kg)
Cyanide (Total)	590
Cyanide (Amenable)	30

[1] Cyanide nonwastewaters are analyzed using SW–846 Method 9010 or 9012, sample size 10 grams, distillation time, one hour and 15 minutes.

b. Cyanide Wastewaters

EPA is promulgating 1.2 mg/l (total cyanide) and 0.86 mg/l (amenable cyanide) as UTS for wastewater forms of cyanide wastes. In the proposed rule, EPA pointed out that a total cyanide concentration of 1.9 mg/l, regardless of process waste type, is widely used in wastewater discharge regulations—namely those for the Metal Finishing Industry and the Organic Chemicals, Plastics and Synthetic Fibers (OCPSF) Industry; however, the concentration of 1.9 mg/l was a typographical error. The Agency intended to propose a concentration 1.2 mg/l of total cyanide. (The 1.2 mg/l level is supported by EPA's OCPSF regulations and the background information in the record to the proposed rule supporting the proposed total cyanide UTS applicable to cyanide wastewaters.) The majority of commenters from the pharmaceutical and waste treatment industry commented on the proposed UTS cyanide for wastewaters assuming a standard of 1.2 mg/l total cyanide level was proposed.

Commenters pointed out that the proposed level of 1.2 mg/l (total cyanide) is not always applied to OCPSF discharges. EPA has authorized permit writers or control authorities to exempt a source from OCPSF's total cyanide (discharge) limit, and to establish a Best Professional Judgement ("BPJ") amenable cyanide limit. The BPJ limit must be based on a determination that the cyanide limits are not achievable due to elevated levels of non-amenable cyanide that result from the unavoidable complexing of cyanide at the process source (40 CFR 414.11(g), 414.91, and 414.101). As with the CWA regulations, EPA provides facilities with a RCRA treatability variance process in the 40 CFR 268.44 regulations that would allow a facility to achieve an alternate treatment standard (see discussion of treatability variance at section XII of this preamble). EPA believes that this provision provides a mechanism for establishing an alternative cyanide limit for OCPSF facilities in appropriate cases.

These commenters also reported that CWA regulations for the Pharmaceutical Industry specify cyanide limitations as high as 33.5 mg/l total cyanide. EPA looked into these concerns; in particular, whether the proposed standard of 1.2 mg/l can be achieved universally. Treatment performance data, however, were not submitted by the commenters. Contrary to the commenters' arguments, the literature and the performance data on cyanide treatment clearly show that cyanide wastewaters are treatable to 1.2 mg/l total cyanide. While the CWA cyanide limit is 33.5 mg/l for the pharmaceutical industry, that limit was established in 1983 and is currently being investigated for possible revision. Data were obtained from these ongoing efforts, confirming that pharmaceutical wastes can achieve the 1.2 mg/l cyanide level.

Other commenters emphasized that because EPA's proposed universal wastewater standard of 1.2 mg/l total CN could not be routinely met by cyanide destruction technologies available at their site, EPA should only set a treatment level of 0.86 mg/l (amenable cyanide). Another commenter added that in the Third Third rule (see 55 FR 22550–22553, June 1, 1990), EPA already set a level of 0.86 mg/l for amenable cyanide in characteristic wastewaters which is routinely met by their modified wastewater treatment system. The proposed UTS treatment standard of 0.86 mg/l (amenable cyanide) is based on the treatment of complex-iron wastewaters from the electroplating industry by alkaline chlorination (a cyanide destruction technology, and BDAT). The commenter urged EPA to set this level as the sole cyanide UTS.

In the first place, the Agency views the issue of requiring treatment for both total and amenable CN to be settled in past rules, and did not intend to reopen it. See 54 FR at 26609 (June 23, 1989). If further response is deemed necessary, EPA remains unpersuaded by these arguments. Clean Water Act effluent limitations could technically be met by adding ferro-sulfate or other sulfate reagents to wastewaters. These chemical reagents do not destroy cyanides in the effluent wastewater but instead, they leave behind iron-cyanide complexes or thiocyanates. By requiring compliance for both amenable and total cyanide, facilities must pursue treatment practices that can effectively destroy cyanides. EPA is thus promulgating 1.2 mg/l (total cyanide) and 0.86 mg/l (amenable cyanide) as UTS for wastewater forms of cyanide wastes.

EPA had previously reserved the treatment standard for total cyanide in wastewater forms of D003 reactive cyanide wastes. In today's rule, EPA is applying the UTS of 1.2 mg/l to this waste. EPA sees no reason that the limit is not generally achievable, and commenters supplied no reasons.

UNIVERSAL TREATMENT STANDARD FOR CYANIDE

[Wastewaters]

Regulated constituent	Maximum for any single composite sample (mg/l)
Cyanide (Total)	1.2
Cyanide (Amenable)	0.86

C. Consolidation of Equivalent Technology-Specific Combustion Standards

Another improvement to the existing Land Disposal Restrictions program that is being made in today's rule is the simplification of two equivalent technology-specific combustion standards in: Table 1—Technology Codes and Description of Technology-Based Standards in 40 CFR 268.42. The Agency is consolidating the descriptions of INCIN (incineration) and FSUBS (fuel substitution), by combining them into one term, CMBST (combustion). The definition of CMBST, as stated in § 268.42 Table 1, is: "combustion in incinerators, boilers, or industrial furnaces operated in accordance with the applicable requirements of 40 CFR part 264 subpart O, and part 266, subpart H." (Because the Part 265 interim status standards for incinerators are largely nonsubstantive, EPA does not view facilities operating pursuant to these standards to be performing BDAT treatment. This is not true of boilers and industrial furnaces, where the interim status standards are nearly as stringent as those for permitted units.)

This definition includes a specific reference to boilers and industrial furnaces in order to clarify that combustion in these units is (and always has been) allowed as a means of complying with FSUBS. The Agency is also clarifying that any future

regulations, such as potential emission limits on metals or halogenated organic content, established in part 264 subpart O, and part 266 subpart H, shall also apply automatically to the standard of CMBST (or INCIN) in part 268. The consolidation of INCIN with FSUBS to read CMBST does not represent any change to the promulgated standards and additional notice and comment was, therefore, not required.

All of the K-, U-, and P-listed wastes that have technology-specific standards contain chemicals that are very difficult to quantify in treatment residues. The chemicals representing the waste codes for which the Agency has promulgated CMBST as a standard are, for the most part, thermally labile and are expected to be destroyed relatively easily in any type of combustion unit. EPA originally set up the two separate standards of INCIN and FSUBS (Final Rule for Third Third Wastes, June 1, 1990), because the Agency did not have in place the operating requirements for boilers and industrial furnaces (i.e., the requirements for FSUBS). See 52 FR at 17021 (May 6, 1987). Because these requirements have been promulgated (56 FR 7134 (February 21, 1991), both sets of standards should assure equally efficient combustion of hazardous waste. For the same reason, there is no need to distinguish between the types of units that are allowed to handle each specific waste code. (EPA is, however, actively reviewing current regulations for combustion units to assure the rules' protectiveness, and may propose more stringent standards for such units. See EPA's Draft Combustion Strategy of May 18, 1993).

As a result of today's action the standards for the following waste codes are modified to read "CMBST":

(1) Two treatment subcategories of D001 wastes
(2) Six source-specific wastes listed in § 261.32: K027, K039, K113, K114, K115, K116
(3) Seventeen wastes listed in § 261.33(e): P001, P003, P005, P009, P040, P041, P043, P044, P062, P068, P081, P085, P088, P102, P105, P109, P112
(4) Forty-one wastes listed in § 261.33(f): U008, U016, U023, U053, U055, U056, U057, U058, U064, U085, U086, U087, U089, U090, U094, U096, U098, U099, U103, U109, U113, U122, U123, U124, U125, U126, U133, U147, U154, U160, U166, U182, U186, U197, U201, U213, U221, U248, U328, U353, U359

Other technology-specific standards and/or numerical standards that have been promulgated for the above listed codes remain unchanged. In particular, the promulgated standards of CHRED and CHOXD (i.e., chemical reduction and chemical oxidation) remain unchanged as alternatives to CMBST for fourteen of the above U and P waste codes. These standards were established because the chemicals represented by these wastes hydrolyze relatively rapidly (i.e., react with water) and both of the technologies represented by these standards are typically performed under aqueous conditions. These waste codes include: P009, P068, P081, P105, P112, U023, U086, U096, U098, U099, U103, U109, U133, U160.

Today's rule does not affect the existing standards for waste codes where INCIN was specified, but FSUBS was not. For those waste codes, the standard remains identified as INCIN, rather than CMBST.

The Agency is further investigating potential modifications to the presentation in 40 CFR 268.40 of all of the technology-specific standards in order to simplify and clarify the promulgated treatment standards, and may propose additional changes in the future.

D. Incorporation of Newly Listed Wastes Into Lab Packs and Changes to Appendices

On June 1, 1990 (55 FR 22629), EPA promulgated alternative treatment standards under 40 CFR 268.42(c) for waste codes listed in 40 CFR 268 Appendix IV and V that are placed in lab packs. These alternative standards are legally constructed, in part, as "specified methods of treatment" because of physical difficulties in measuring compliance with numerical standards for these multi-coded waste forms (i.e., compliance is complicated by the fact that many lab packs are comprised of hundreds of small containers, each with different organic or organo-metallic chemicals in them, making it difficult to accurately sample treatment residues for those organics). In the January, 1991, correction notice and again in the May 30, 1991, Advance Notice of Proposed Rulemaking (56 FR 24453), the Agency requested comment on potential improvements to these alternative standards.

EPA's original intent in establishing two separate appendices was to distinguish between those lab packs containing organo-metallics (Appendix IV) and those containing only organics (Appendix V). As such, lab packs containing organo-metallics (Appendix IV) were expected to need stabilization after performing the specified method of treatment, INCIN (i.e., incineration), while Appendix V lab packs only needed to be incinerated. However, under 40 CFR 268.42(c)(4), all treatment residues of either type of lab pack also had to comply with the standards for the extraction procedure (EP) for metals, i.e., D004, D005, D006, D007, D008, D010, and D011. (D009 is not included in this list because most mercury-bearing wastes were excluded from the use of the alternative standards in both of these Appendices.) As such, if metals were concentrated in the residues from the incineration of an Appendix V lab pack and the resultant residues then exhibited one of the characteristics for EP metals, these residues would also have had to be stabilized to comply with the appropriate treatment standard for metals. In such a case, there was no practical difference between Appendix IV and Appendix V lab packs in terms of the treatment that was needed.

The majority of the comments received from the regulated community supported the Agency's proposed approach. In this final rule EPA is, therefore, replacing Appendix IV and Appendix V with a new Appendix IV. In order to simplify the new Appendix IV it only contains those wastes excluded from lab packs. The following wastes are excluded from lab packs (and appear in new Appendix IV) for the purpose of using the alternative lab pack treatment standard in 40 CFR 268.42(c): D009, F019, K003, K004, K005, K006, K062, K071, K100, K106, P010, P011, P012, P076, P078, U134, U151.

In today's rule, EPA is also stating that the alternative treatment standard for lab packs applies to the following additional waste codes that were previously not included in Appendix IV or V: wastes for which treatment standards were promulgated in the LDR Phase I rule August 1, 1992 (57 FR 37194), and wastes (including TC organic wastes) for which treatment standards are promulgated in this final rule. Today's rule does not list these as excluded waste codes in the new Appendix IV.

As a matter of clarification, the alternative treatment standard for lab packs is INCIN. This required combustion technology combined with the requirements of 40 CFR 268.42(c)(4) (ash residues are treated to meet the characteristic metals treatment standards), will ensure that all underlying hazardous constituents present in characteristic wastes (other than those excluded in the new Appendix IV), will be treated. The use of this alternative lab pack standard negates the requirement to monitor for, or comply with, the UTS for underlying hazardous organic constituents.

For reasons outlined in the June 1, 1990 final rule, mercury wastes were excluded from this alternative standard for lab packs. Mercury is considered a "volatile metal" which may lead to excessive air emissions in some combustion devices when present in large quantities. Mercury is also very difficult to stabilize if present in ash residues in large quantities. Commenters did not provide any justifiable technical reason for EPA to modify its position with respect to mercury wastes, and thus these wastes shall remain excluded from this alternative lab pack treatment standard.

E. Changes in the LDR Program in Response to the LDR Roundtable

FPA convened a roundtable meeting on January 12–14, 1993 to discuss the LDR program. The purpose of the roundtable was for EPA to hear suggestions on improvements to the LDR program from persons who implement it. Participants included representatives of hazardous waste generators, treaters, and disposers; public interest groups; state environmental agencies; EPA regional offices; and other federal agencies. EPA is today promulgating several recommendations made by roundtable participants. The Agency is consolidating the three existing treatment standard tables into one table, and is simplifying notification requirements and reducing paperwork, as discussed below. In addition, as discussed in an earlier section of this preamble, the Agency is also promulgating universal treatment standards. Furthermore, the Agency is committed to continue to identify ways the LDR program can be simplified. Additional opportunities for such streamlining will be explored in future LDR rulemakings.

1. Consolidated Treatment Table

Several of the groups present at the LDR roundtable expressed an interest in having a consolidated treatment standard table in the regulations. Participants stated that the existing system of three separate tables at 40 CFR 268.41–268.43 was too complex and burdensome. In its September 14, 1993 notice, EPA proposed a single consolidated table of treatment standards. Comments on the table were favorable.

Today, EPA is replacing the three existing treatment standard tables with the consolidated table, called "Treatment Standards for Hazardous Waste" and placing it at § 268.40 along with much of the text found currently in §§ 268.41–268.43. Section 268.42 continues to describe the technology codes, to regulate California list PCBs and HOCs, to set out exemptions from the required methods, and to provide procedures for equivalency determinations. The numerical treatment standards in the consolidated table are identical to the UTS promulgated in today's rule with the exception of characteristic metal wastes.

Reformatting §§ 268.40–268.43 also corrects a confusing aspect of the way the Code of Federal Regulations (CFR) has appeared for some time. The "No Land Disposal" treatment standards that have appeared at § 268.43 will be deleted from the regulations and should no longer appear in the CFR. These treatment standards have not been in effect since 1990, when the LDR Third Third rule set treatment standards for these wastes that were expressed as either methods of treatment or numerical standards that now appear in the consolidated treatment standard table § 268.40. It was only a drafting oversight that made these "No Land Disposal" standards continue to appear in the regulations, and today's rule corrects this mistake.

2. Simplified LDR Notification Requirements

Comments on LDR notification requirements at the roundtable ranged from suggestions that EPA should eliminate notifications altogether to suggestions that EPA modify or delete data items on the notification. In response, EPA proposed to eliminate the requirement at 40 CFR 268.7(a)(1)(ii) and at 268.9(d)(1) that the notification include treatment standards or references to those standards. It was argued that such a simplification makes particular sense in conjunction with EPA's proposal to consolidate the treatment standard tables. Commenters on this issue all supported this proposed simplification. EPA is thus dropping the treatment standard or reference to the treatment standard from the LDR notification in this final rule.

Today's action does not eliminate the existing requirement to identify the constituents in F001–F005 spent solvent wastes, F039 wastes, or the underlying hazardous constituents in D001, D002, and in TC organic wastes, unless the generator/treater is going to monitor for all hazardous constituents in the waste. However, the regulatory language is made clearer, and there is no longer any requirement that the corresponding constituent level be included with the constituents identified on the LDR notification for these wastes.

IV. Treatment Standards for Toxicity Characteristic Waste

A. Introduction—Content and Scope

EPA is promulgating treatment standards for the newly identified toxicity characteristic (TC) organic wastes (D018–D043) as proposed. These are identical to the UTS in today's rule. The UTS apply to the underlying hazardous constituents in the TC waste as well as the individual constituent responsible for the TC designation. Underlying hazardous constituents are any constituents in § 268.48 which are reasonably expected to be present at levels above the UTS at the point of generation of the TC waste. (See definition at § 268.2(i).) Although the intent of today's regulations is to require treating all underlying hazardous constituents present plus the TC constituent, today's rule calls for generators to monitor only the TC constituent and those underlying hazardous constituents "reasonably expected to be present" in their waste at its point of generation. Today's rule is promulgating the compliance monitoring provisions that were proposed. Section X of this preamble (Compliance Monitoring and Notification) discusses them in detail.

Several commenters suggested that EPA promulgate alternative standards of incineration (INCIN), fuel substitution (FSUBS) and recovery of organics (RORGS) for these wastes. These commenters pointed to the Interim Final Rule of May 24, 1993 (58 FR 29867) where EPA extended the use of these methods of treatment to all D001 wastes disposed outside CWA or CWA-equivalent impoundments or Safe Drinking Water Act regulated Class I underground injection wells. EPA is not adopting this approach in today's rule for TC organic wastes. First, EPA does not believe that methods of treatment intended to address organic constituents will always adequately address any underlying metal constituents present in these wastes. In addition, the Agency has not yet been able to completely evaluate the appropriateness of requiring specified treatment technologies for TC wastes and other wastes.

1. Waste Management Systems Affected by Today's Rule

In terms of waste management systems, today's rule applies to those TC wastes which are managed in systems other than: (1) wastewater treatment systems which include surface impoundments whose ultimate discharge is subject to the Clean Water Act (CWA); (2) zero dischargers who,

before permanent land disposal of the wastewater, treat the wastewaters in a CWA-equivalent wastewater treatment system; or, (3) Class I underground injection wells subject to the Safe Drinking Water Act (SDWA) Underground Injection Control (UIC) program. CWA-equivalent treatment means biological treatment for organics, reduction of hexavalent chromium, precipitation/sedimentation for metals, alkaline chlorination or ferrous sulfate precipitation of cyanide (to the extent these constituents are present in the untreated influent to wastewater treatment systems), or treatment that the facility can show performs as well or better than these enumerated technologies. See § 268.37(a), 58 FR at 29885 (May 24, 1993). Organic TC wastes managed in these types of systems will be regulated in the next LDR rule.

Additionally, "decharacterizing" the TC wastes regulated under this rule by rendering them noncharacteristic does not remove them from the scope of these regulations. *Chemical Waste Management* v. *EPA*, 976 F. 2d at 14–15. Consequently today's final rule will apply to some injection practices, in particular, those involving Class V injection wells. These typically are wells injecting nonhazardous wastes above or into underground sources of drinking water. (If, however, the TC wastes injected into non-Class I wells were to be treated by CWA-equivalent means before injection, today's treatment standards would not apply. This is an example of the type of zero discharger referred to above.)

2. Categories of TC Wastes Affected by Today's Rule

The following TC wastes are subject to UTS: (1) all wastes identified as D018 through D043 (described in the proposed rule as "new organic constituents); (2) D012 through D017 organic pesticide wastes whose TCLP extract composition meets the concentration criteria of 40 CFR 261.24, Table A but whose EP extract composition does not; (3) D012 through D017 pesticide wastes whose TCLP extract composition meets the concentration criteria of 40 CFR 261.24 Table A, as does the EP extract composition, and (4) soil and debris contaminated with the preceeding three sets of wastes. The first two categories are newly identified wastes, i.e. wastes not yet identified as hazardous at the time of the 1984 amendments and therefore not covered by the original statutory schedule. (The March 29, 1990 rule extended the list of chemicals defined as TC and changed the extraction step to a more sensitive procedure which may potentially identify more pesticide wastes than did the EP.) For soil contaminated with the TC wastes, the variance process is available (see discussion in the Background section of this rule under the heading "E. Treatment Standards for Hazardous Soil").

As noted in the proposed rule, regulating land disposal of newly identified TC wastes by addressing underlying hazardous constituents is the same approach as EPA adopted in the recent interim final rule for ignitable (D001) and corrosive (D002) characteristic wastes, promulgated on May 10, 1993 (published on May 24, 1993, 58 FR 29860) in response to the court's decision in *Chemical Waste Management* v. *EPA*, 976 F. 2d 2. That case vacated and remanded certain Agency regulations (commonly referred to as the Third Third rule) establishing prohibitions and treatment standards for characteristic wastes, and also established rules as to when the prohibitions and standards would not apply. A summary of the court's decision, an overview of the interim final rule published on May 24, 1993, and a discussion of how the Agency proposed to apply this approach to the TC wastes can be found in the text of the proposed rule at 58 FR 48092.

Today's rule regulates underlying hazardous constituents in the D018–D043 as well as in newly identified D012–D017 and in the rest of the universe of D012–D017 wastes. (The definition of "underlying hazardous constituents" is contained at 268.2(i) in this rule.) For those D012–D017 nonwastewaters originally regulated in the Third Third rule, today's rule changes the numerical value of the previously applicable treatment standards to the UTS.

3. Soil Contaminated by Underground Storage Tanks

Soil which is contaminated with petroleum and is managed during corrective action of releases from a RCRA Subtitle I underground storage tank (UST) is not subject to the treatment standards promulgated today for the TC organic wastes (D018–D043). Such soil that fails the TC for one or more of the newly identified organic wastes (D018–D043) has been temporarily deferred from regulation as a hazardous waste (55 FR 26986). In addition, the Agency has proposed to permanently exempt UST petroleum-contaminated soils from the TC rule (58 FR 8504). However, any Subtitle I petroleum-contaminated soil identified as D001 through D017 would not be subject to the deferral and would be subject to all applicable RCRA land disposal restriction requirements.

The Agency reminds the regulated community that any soil contaminated by a release from a hazardous substance UST (Subtitle I) as well as from all non-Subtitle I USTs (including petroleum tanks) will continue to be subject to applicable RCRA hazardous waste requirements, including the land disposal restrictions. Likewise, petroleum-contaminated soils from non-UST sources that exhibit a hazardous characteristic are also subject to applicable Subtitle C requirements.

4. Metal TC Wastes Are Not Affected by Today's Rule

Today's rule does not affect TC metal wastes at all; this rule leaves the Third Third final treatment standards (which apply to EP metals) in place. Furthermore, today's rule does not affect the mineral processing wastes which were formerly exempt from Subtitle C regulation under the Bevill Amendment but which recently lost that exemption. Included in that set of wastes are wastes from the remediation of historic manufactured gas plant or coal gasification sites. EPA will address TC metal wastes and the former Bevill mineral processing wastes in a future rulemaking.

B. Background

1. Legal and Policy Basis for Today's TC Standards

Today's rule applies the UTS to underlying hazardous constituents in D012–D043 wastewaters and nonwastewaters. Commenters' principal objection to the proposed standards for TC wastes was that the September 1992 Circuit Court decision did not authorize EPA to regulate underlying hazardous constituents in TC wastes.

Most of these comments asserted that organic TC wastes were fundamentally different from ignitable or corrosive wastes and therefore EPA's decision to apply the standards promulgated in the May 24, 1993 Interim Final Rule for ignitable and corrosive wastes was inappropriate. These commenters said that TC wastes were unlikely to pose a threat to human health and the environment once treatment removed the single constituent, partly because such treatment would remove other similar hazardous components of the waste. None of these commenters submitted process data demonstrating these claims. On the other hand, some commenters argued that merely deactivating characteristic wastes might

well leave hazardous components intact.

The Agency is regulating in this rule underlying hazardous constituents in TC wastes when they are managed in non-CWA/non-CWA equivalent/non-Class I injection well waste management systems. If, as commenters assert, treatment of the TC constituent effectively treats underlying hazardous constituents, then regulating the underlying hazardous constituent poses no further burden. Additionally, EPA believes that the compliance monitoring provisions requiring the generator to address only those underlying constituents "reasonably expected to be present in the wastes" relieves generators and treaters from an undue regulatory burden.

Several commenters objected that extending the requirement to treat underlying hazardous constituents from ignitable and corrosive wastes, as promulgated in the May 24, 1993 Interim Final Rule, to TC wastes was unnecessary. The numerical treatment standard for the constituent present at the TC level, the commenters reasoned, meets RCRA's section 3004(m) "minimize threat" requirement. EPA is not persuaded by such reasoning. 55 FR 22542, 22652 (June 1, 1990); Chemical Waste Management, 976 F.2d at 14; HWTC III, 886 F. 2d at 362. The TC level identifies wastes that are clearly hazardous, and does not evaluate presence of underlying hazardous constituents, non-groundwater exposure pathways, or adverse environmental effects.

2. Ongoing Management Practices for TC Wastes

The proposed rule solicited comments and data on volumes of TC wastes managed in Class V injection wells, and on waste management practices employed prior to such injection. EPA received little substantive comment and consequently has no basis for changing the proposed approach.

The proposed rule also solicited information about industrial generation patterns in order to allow the Agency to assess the potential for source reduction or recycling for these TC wastes in light of their wide diversity. However, EPA received no comments describing current industry practices upon which the Agency could act.

The Agency is to consider opportunities for source reduction and recycling of these wastes, and ways treatment standards could reflect such types of waste minimization. The Agency notes that the subtitle C rules generally, and the LDR rules in particular, have already resulted in substantial volumes of hazardous waste no longer being generated, because these rules impose waste management costs on hazardous waste generators, and thus create a financial incentive to generate less waste.

Finally, several commenters expressed concerns about achievability of UTS for underlying hazardous constituents in complex matrices and about the appropriateness of numerical standards based on incineration. See the discussion of UTS in section III.A of this preamble for more information on these comments.

C. Treatment Standards for New TC Organic Constituents (D018–D043)

1. Nonwastewaters

The Agency is also promulgating concentration-based treatment standards for TC organic constituents in nonwastewaters, that are identical to the levels promulgated as UTS in a separate section of this preamble. These standards are based on treatment data that were used to establish UTS for these same constituents in listed wastes. These standards are primarily based on incineration data and are presented at the end of this section.

EPA believes that a variety of treatment technologies, combustion and non-combustion, can achieve these treatment standards. EPA reiterates that any technology that does not constitute impermissible dilution can be used to meet these concentration levels.

BDAT STANDARDS FOR TC ORGANIC WASTES

[Nonwastewaters]

Code	Regulated constituent	Maximum for any single grab sample. Total composition (mg/kg)
D018	Benzene	10
D019	Carbon tetrachloride	6.0
D020	Chlordane	0.26
D021	Chlorobenzene	6.0
D022	Chloroform	6.0
D023	o-Cresol	5.6
D024	m-Cresol	[1] 5.6
D025	p-Cresol	[1] 5.6
D026	Cresol	5.6
D027	1,4-Dichlorobenzene	6.0
D028	1,2-Dichloroethane	6.0
D029	1,1-Dichloroethylene	6.0
D030	2,4-Dinitrotoluene	140
D031	Heptachlor	0.066
D031	Heptachlor epoxide	0.066
D032	Hexachlorobenzene	10
D033	Hexachloro-1,3-butadiene.	5.6
D034	Hexachloroethane	30
D035	Methyl ethyl ketone	36

BDAT STANDARDS FOR TC ORGANIC WASTES—Continued

[Nonwastewaters]

Code	Regulated constituent	Maximum for any single grab sample. Total composition (mg/kg)
D036	Nitrobenzene	14
D037	Pentachlorophenol	7.4
D038	Pyridine	16
D039	Tetrachloroethylene	6.0
D040	Trichloroethylene	6.0
D041	2,4,5-Trichlorophenol	7.4
D042	2,4,6-Trichlorophenol	7.4
D043	Vinyl Chloride	6.0

[1] m- and p-cresol are regulated together as the sum of their concentrations.

2. Wastewaters

The Agency is today promulgating concentration-based treatment standards for the TC organic constituents in wastewaters, that are identical to the levels promulgated as UTS in a separate part of today's rule. These standards were based on existing treatment data that were used to establish UTS for these same constituents in the broad array of listed wastes. Today's standards are based on data representing a variety of wastewater treatment units and are presented at the end of this section.

These wastewater treatment standards apply to newly identified TC wastewaters that are managed in systems other than those regulated under the CWA, those regulated under the SDWA that inject TC wastewaters into Class I injection wells, and those zero discharge facilities that engage in CWA-equivalent treatment prior to land disposal. The treatment standards promulgated today for newly identified TC organic (D018–D043) wastewaters require treatment to meet the UTS for the TC constituent and for the underlying hazardous constituents in the TC waste as generated.

BDAT STANDARDS FOR TC ORGANICS

[Wastewaters]

Constituent	Maximum for any single grab sample. Total composition (mg/l)
D018—Benzene	0.14
D019—Carbon tetrachloride	0.057
D020—Chlordane	0.0033
D021—Chlorobenzene	0.057
D022—Chloroform	0.046
D023—o-Cresol	0.11
D024—m-Cresol	0.77

BDAT STANDARDS FOR TC ORGANICS—Continued

[Wastewaters]

Constituent	Maximum for any single grab sample. Total composition (mg/l)
D025—p-Cresol	0.77
D026—Cresol	0.88
D027—1,4-Dichlorobenzene	0.09
D028—1,2-Dichloroethane	0.21
D029—1,1-Dichloroethylene	0.025
D030—2,4-Dinitrotoluene	0.32
D031—Heptachlor	0.0012
D031—Heptachlor epoxide	0.016
D032—Hexachlorobenzene	0.055
D033—Hexachloro-1,3-butadiene	0.055
D034—Hexachaloroethane	0.055
D035—Methyl ethyl ketone	0.28
D036—Nitrobenzene	0.068
D037—Pentachlorophenol	0.089
D038—Pyridine	0.014
D039—Tetrachloroethylene	0.056
D040—Trichloroethylene	0.054
D041—2,4,5-Trichlorophenol	0.18
D042—2,4,6-Trichlorophenol	0.035
D043—Vinyl Chloride	0.27

3. Radioactive Mixed Waste

Radioactive mixed wastes are those wastes that satisfy the definition of radioactive waste subject to the Atomic Energy Act (AEA) that also contain waste that is either listed as a hazardous waste in Subpart D of 40 CFR Part 261, or that exhibit any of the hazardous waste characteristics identified in subpart C of 40 CFR Part 261. Since the hazardous portions of the mixed waste are subject to RCRA, the land disposal restrictions apply. This means that the RCRA hazardous portion of all mixed waste must meet the appropriate treatment standards for all applicable waste codes before land disposal. Therefore, any radioactive waste mixed with organic TC wastes that are managed in non-CWA/non-CWA-equivalent/non-Class I SDWA facilities must meet the treatment standards being promulgated today for the TC wastes.

The standards that were proposed for the TC wastes were also proposed for TC radioactive mixed wastes. Prior to this proposal, however, the Department of Energy (DOE) had expressed some concerns about meeting certain treatment standards and stated that they were collecting data from their facilities on mixed TC wastes. EPA stated in the proposed rule that, for the most part, the low concentrations of radioactive compounds should not interfere with the treatability of the hazardous constituents in the waste, and requested data on instances when the radioactivity prevented the waste from meeting the LDR treatment standard.

One commenter suggested that EPA postpone its decision on appropriate methods for treating mixed waste until information currently being collected profiling commercially generated low-level radioactive mixed waste has been submitted and reviewed by EPA. This commenter claimed that the results of this profile contradict EPA's statement that radioactive material concentrations in mixed waste are low and should not interfere with the treatment of the mixed waste. Another commenter expressed the belief that the presence of radioactive components within the limits of operator exposure and safety should not interfere with the treatment of hazardous constituents in waste.

Neither commenter submitted any data or other supporting information to substantiate their assertions regarding the treatability of radioactive mixed waste; therefore, EPA has decided to promulgate the standards for newly identified TC radioactive mixed wastes as proposed. However, if data is submitted to EPA indicating that the presence of radioactive components prevents a waste from meeting the LDR treatment standards, the Agency will evaluate the data and amend the standards as appropriate. The Agency's variance provisions of 40 CFR 268.44 can also be used to obtain alternate limits in the meantime.

D. Treatment Standards for Pesticide Wastes Exhibiting the Toxicity Characteristic

D012—Endrin
D013—Lindane
D014—Methoxychlor
D015—Toxaphene
D016—2,4-D
D017—2,4,5-TP (Silvex)

The Agency is promulgating treatment standards for these wastes essentially as proposed with the additional requirement that underlying hazardous constituents be treated in nonwastewater forms of these wastes. Today's standards apply to all D012–D017 wastes managed in non-CWA/non-CWA-equivalent/non-Class I injection well waste management facilities. These are the toxic pesticide wastes which are identified as toxic following application of the TCLP. The TCLP is more sensitive than the EP analysis, possibly bringing more wastes into the toxicity characteristic category than did the EP.

1. Newly Identified Pesticide Nonwastewaters

EPA is today regulating newly identified D012–D017 nonwastewaters plus D012–D017 nonwastewaters regulated earlier in the Third Third rule. Treatment standards for both sets of D012–D017 nonwastewaters include the UTS value for the TC constituents plus UTS values for underlying hazardous constituents. The changes between the Third Third standards and today's rule are that the numerical value of the toxaphene nonwastewater standard rises from 1.3 to 2.6 and the standard for D013, lindane, incorporates numbers for the four BHC isomers. (It should be noted that EPA determined that the amount of D012–D017 waste subject to the treatment standards is very small. 55 FR at 22634, 22646. Based on this determination, it is very unlikely that newly identified D012–D017 are being generated.)

Today's rule also prohibits dilution of D012–D017 nonwastewaters injected into Class I deep injection wells. Consequently, these pesticide wastes must be treated to meet the treatment standards before they can permissibly be injected into such units, unless that unit has been granted a no-migration determination. Section VIII of this preamble discusses this and other deepwell injection issues presented in today's rule in more detail.

BDAT STANDARDS FOR PESTICIDES

[Nonwastewaters]

Code	Regulated constituent	Maximum for any single grab sample. Total composition (mg/kg)
D012	Endrin	0.13
D012	Endrin aldehyde	0.13
D013	alpha-BHC	0.066
D013	beta-BHC	0.066
D013	gamma-BHC	0.066
D013	delta-BHC	0.066
D014	Methoxychlor	0.18
D015	Toxaphene	2.6
D016	2,4-D	10
D017	2,4,5-TP (Silvex)	7.9

2. Pesticide Wastewaters

EPA set treatment standards expressed as required methods of treatment for the EP toxic pesticide wastewaters in the Third Third final rule (55 FR 22554). Today's rule extends these treatment standards to those pesticide wastewaters covered in today's rule. (See 268.40)

E. Exemptions for De Minimis Losses of Commercial Chemical Product or Chemical Intermediates That Exhibit the Toxicity Characteristic (TC), and for TC Laboratory Wastes Discharged to CWA Wastewater Treatment Systems

In the Interim Final Rule published May 24, 1993, EPA established *de minimis* exemptions for commercial chemical product or chemical intermediates that are ignitable or corrosive hazardous wastes and that contained underlying hazardous constituents (58 FR 29875). The Agency proposed in Phase II to extend the exemptions in 40 CFR 268.1 to commercial chemical products or chemical intermediates that are TC organic wastes when disposed (58 FR 48118). Commenters expressed support for this approach.

This action is necessary to avoid situations where minor leaks of organic TC commercial chemical products or chemical intermediates to a wastewater treatment system would potentially trigger all of the potential consequences of treating all underlying hazardous constituents that might be in the waste. As EPA noted in originally determining that the mixture rule should not apply in such situations, such small losses are as a practical matter unavoidable; responsible management involves channeling these minor losses to a centralized wastewater treatment system. In addition, there is a natural incentive to minimize the losses because the materials would otherwise be commercial chemical products or intermediates (46 FR 56583, Nov. 17, 1981). Moreover, allowing *de minimis* losses of TC materials to trigger all of the LDR treatment consequences would be anomalously stringent because *de minimis* losses of listed wastes (i.e., the commercial chemical products listed in § 261.33), which tend to be more concentrated (see generally 58 FR at 29875), would not be regulated because of the exception to the mixture rule found at § 261.3(a)(iv)(D).

This same type of exception is needed for TC laboratory wastes that are commingled with other plant wastewaters under designated circumstances: TC laboratory wastes containing underlying hazardous constituents from laboratory operations, that are mixed with other plant wastewaters at facilities whose ultimate discharge is subject to regulation under the CWA (including wastewaters at facilities which have eliminated the discharge of wastewater), provided that the annualized flow of laboratory wastewater into the facility's headwork does not exceed one part per million (the same condition that applies to the existing exemption in § 261.3(a)(2)(iv)(E)).

Thus *de minimis* losses of commercial chemical product or chemical intermediates that are TC organic wastes, and TC organic laboratory wastes discharged to CWA wastewater treatment systems, are not subject to the requirements of 40 CFR 268. *De minimis* losses are those occurring from normal material handling, minor leaks of equipment tanks or containers, and similar small but, for practical purposes, unavoidable losses. See § 261.3(a)(2)(iv)(D) and 268.1(e)(4) as promulgated at 58 FR 29884 (May 24, 1993). The definition of *de minimis* loss is the same as EPA used in the May 24, 1993 rule. This definition mirrors the parallel language in § 261.3(a)(iv)(D) except that it also includes discharges from safety showers and rinsing and cleaning of personal safety equipment and rinsate from empty containers or from containers that are rendered empty by that rinsing. When the § 268.1(e)(4) definition was originally promulgated in the May 24, 1993 rule, it seemed unlikely that ignitable or corrosive wastes would be generated from safety showers or rinsate. The Agency believes it is more likely that TC wastes could be generated in such a manner, therefore, the definition is being expanded to include this language in this rule.

EPA also notes that the characteristic commercial chemical products exempted under this rule and the May, 1993 rule are not limited to products in which a particular chemical is "the commercially pure grade of the chemical, any technical grades of the chemical, and all formulations in which the chemical is the sole active ingredient." (See § 261.33(d) comment). Rather, the exemption extends to *de minimis* losses (as defined) of in-process materials such as intermediates and materials that would be products if they were not inadvertently discarded. 55 FR at 2869 (Jan. 31, 1991). The citation in the comment to § 261.33(d), quoted above, is necessary to define the scope of the listing, but as just explained, does not apply to losses of characteristic materials.

V. Treatment Standards for Newly Listed Wastes

A. Treatment Standards for Coke By-product Production Wastes

K141—Process residues from the recovery of coal tar, including but not limited to tar collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087, decanter tank tar sludge from coking operations.

K142—Tar storage tank residues from the production of coke from coal or the recovery of coke by-products produced from coal.

K143—Process residues from the recovery of light oil, including but not limited to those generated in stills, decanters, and wash oil recovery units from the recovery of coke by-products produced from coal.

K144—Wastewater treatment sludges from light oil refining, including but not limited to intercepting or contamination sump sludges from the recovery of coke by-products produced from coal.

K145—Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal.

K147—Tar storage tank residues from coal tar refining.

K148—Residues from coal tar distillation, including but not limited to still bottoms.

EPA is promulgating the treatment standards that were proposed for coke by-product production wastes. These treatment standards also apply to soil and debris contaminated with these wastes, although a variance process is available for such soils (see discussion on variances in the Background section of this rule under the heading "E. Treatment Standards for Hazardous Soil"). The preamble of the proposed rule describes the generation and characteristics of the newly listed wastes in greater detail (58 FR 48119). Today's standards are concentration-based limits for wastewaters and nonwastewaters, numerically identical to the UTS promulgated elsewhere in this rule for the nine constituents regulated in these wastes.

The American Coke and Coal Chemicals Institute requested that EPA allow the use of these wastes as fuels in blast furnaces and other applications where coke, coal and coal tar are used as fuels. The commenters were requesting EPA to extend the existing recycling exclusion—which allows these wastes to be combined with coal feedstock residue as it is charged to the coke oven, added to the coal recovery process or mixed with coal tar before this coal tar is sold as a product or further refined. Extending this exclusion

is beyond the scope of this regulation; it was not included in the September proposal as an option for managing these wastes. The Definition of Solid Waste Task Force is examining the broad range of these types of issues.

The other comments received concerning the proposed treatment standards for coke products' wastes came from the waste treatment industry. Several waste treatment companies supported applying universal standards to these waste streams and the UTS concept in general. However, one commenter provided data in support of extending the standards originally applied to K087 to these wastes. EPA evaluated these data but found no reason not to apply UTS to these wastes. EPA's evaluation of these data is presented in the Background Document for these wastes. In separate comments, two waste treatment companies objected to the benzene nonwastewater standards as unnecessarily high and pointed out that their facilities could achieve benzene limits below that proposed in the UTS. EPA does not believe these data really reflect better treatment. Rather, the commenters appear to have generated a waste matrix in which benzene is detectable at lower levels. EPA is promulgating the benzene nonwastewater standard as proposed, believing that it reflects an appropriate and broader assessment of benzene detection limits in combustion residues.

BDAT STANDARDS FOR K141, K142, K143, K144, K145, K147, AND K148

[Nonwastewaters]

Constituent	Maximum for any single grab sample. Total composition (mg/kg)	Constituents regulated for waste codes						
		K141	K142	K143	K144	K145	K147	K148
Benzene	10	X	X	X	X	X	X	
Benz(a)anthracene	3.4	X	X	X	X	X	X	X
Benzo(a)pyrene	3.4	X	X	X	X	X	X	X
Benzo(b)fluoranthene	[1] 6.8	X	X	X	X		X	X
Benzo(k)fluoranthene	[1] 6.8	X	X	X	X		X	X
Chrysene	3.4	X	X	X	X	X	X	X
Dibenz(a,h)anthracene	8.2	X	X		X	X	X	X
Indeno(1,2,3-cd)pyrene	3.4	X	X				X	X
Naphthalene	5.6					X		

[1] This standard represents the sum of the concentrations for each of this pair of constituents.

BDAT STANDARDS FOR K141, K142, K143, K144, K145, K147, AND K148

[Wastewaters]

Constituent	Maximum for any single grab sample. Total composition (mg/l)	Constituents regulated for waste codes						
		K141	K142	K143	K144	K145	K147	K148
Benzene	0.14	X	X	X	X	X	X	
Benz(a)anthracene	0.059	X	X	X	X	X	X	
Benzo(a)pyrene	0.061	X	X	X	X	X	X	X
Benzo(b)fluoranthene	[1] 0.11	X	X	X	X		X	X
Benzo(k)fluoranthene	[1] 0.11	X	X	X	X		X	X
Chrysene	0.059	X	X	X	X	X	X	X
Dibenz(a,h)anthracene	0.055	X	X		X	X	X	X
Indeno(1,2,3-cd)pyrene	0.0055	X	X				X	X
Naphthalene	0.059					X		

[1] This standard represents the sum of the concentrations for each of this pair of constituents.

B. Treatment Standards for Chlorotoluenes

K149—Distillation bottoms from the production of alpha (methyl) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. (This waste does not include still bottoms from the distillation of benzyl chloride.)

K150—Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha (methyl) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.

K151—Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha (methyl) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides and compounds with mixtures of these functional groups.

EPA is promulgating the treatment standards that were proposed for chlorotoluene wastes. The preamble of the proposed rule describes the generation and characteristics in greater detail (58 FR 48121). Today's standards are concentration-based limits for wastewaters and nonwastewaters, numerically identical to the UTS promulgated elsewhere in this rule for the thirteen constituents regulated in these wastes.

Comments received concerning the proposed treatment standards for chlorotoluene wastes came from the waste treatment industry; they were similar to those received concerning the treatment standards for coking wastes. Several waste treatment companies supported applying universal standards to these waste streams and the UTS concept in general. Two waste treatment companies objected to the benzene nonwastewater standards as unnecessarily high and pointed out that their facilities could achieve benzene limits below that proposed in the UTS. EPA, however, believes that the UTS for benzene nonwastewaters reflects an appropriate and broad assessment of benzene detection levels in combustion residues.

BDAT STANDARDS FOR K149, K150, AND K151

[Nonwastewaters]

Constituent	Maximum for any single grab sample. Total composition (mg/kg)	Constituents regulated for waste codes		
		K149	K150	K151
Benzene	10			X
Carbon tetrachloride	6.0		X	X
Chloroform	6.0	X	X	X
Chloromethane	30	X	X	
Chlorobenzene	6.0	X		
1,4-Dichlorobenzene	6.0	X	X	
Hexachlorobenzene	10	X	X	X
Pentachlorobenzene	10	X	X	X
1,2,4,5-Tetrachlorobenzene	14	X	X	X
1,1,2,2-Tetrachloroethane	6.0		X	
Tetrachloroethylene	6.0		X	X
1,2,4-Trichlorobenzene	19		X	
Toluene	10	X		X

BDAT STANDARDS FOR K149, K150, AND K151

[Wastewaters]

Constituent	Maximum for any single grab sample. Total composition (mg/l)	Constituents regulated for waste codes		
		K149	K150	K151
Benzene	0.14			X
Carbon tetrachloride	0.057		X	X
Chloroform	0.046	X	X	X
Chloromethane	0.19	X	X	
Chlorobenzene	0.057	X		
1,4-Dichlorobenzene	0.090	X	X	
Hexachlorobenzene	0.055	X	X	X
Pentachlorobenzene	0.055	X	X	X
1,2,4,5-Tetrachlorobenzene	0.055	X	X	X
1,1,2,2-Tetrachloroethane	0.057		X	
Tetrachloroethylene	0.056		X	X

BDAT STANDARDS FOR K149, K150, AND K151—Continued

[Wastewaters]

Constituent	Maximum for any single grab sample. Total composition (mg/l)	Constituents regulated for waste codes		
		K149	K150	K151
1,2,4-Trichlorobenzene	0.055		X	
Toluene	0.080	X		X

VI. Debris Contaminated With Newly Listed or Identified Wastes

Debris contaminated with the hazardous wastes included in today's rule must be treated prior to land disposal. The hazardous debris may be treated to meet the treatment standards promulgated today for the constituents which are contaminating the debris, or it may be treated to meet the alternative debris standards promulgated in the LDR for Newly Listed Wastes and Hazardous Debris (57 FR 37194, August 18, 1992).

A. Debris Treated To Meet the Phase II Treatment Standards

Debris that is treated to meet the treatment standards promulgated in today's rule for newly listed wastes would remain subject to the hazardous waste management regulations (subtitle C) for as long as the debris "contains" the hazardous waste (see 57 FR 37625–26, August 18, 1992). On the other hand, debris that is treated to meet the treatment standards promulgated in today's rule for newly identified TC organic wastes, including any underlying hazardous constituents the generator reasonably expects to be present in the waste, could be disposed in a nonhazardous waste (subtitle D) landfill because the characteristic identifying the waste as hazardous is removed through meeting the LDR treatment standards.

B. Debris Treated To Meet the Alternative Debris Treatment Standards

The alternative treatment standards require the use of specific technologies from one or more of the following categories: extraction technologies, destruction technologies, or immobilization. Treatment must be performed in accordance with specified performance standards found in the regulations at 40 CFR 268.45. If one of the extraction or destruction technologies is used, and the debris does not display any characteristic of hazardous waste, then EPA would consider the treated debris to no longer contain hazardous waste. Such treated debris could, therefore, be reused, returned to the natural environment, or disposed in a nonhazardous waste (subtitle D) facility. Nondebris residuals generated from the treatment of debris contaminated with listed wastes would still be hazardous wastes by virtue of the derived-from rule and would be subject to the hazardous waste management system, including the treatment standards for newly listed wastes in today's rule.

VII. Response to Comments Regarding Exclusion of Hazardous Debris That Has Been Treated by Immobilization Technologies

A. Background

The final Phase I Land Disposal Restrictions (LDR) rule promulgated on June 30, 1992 (57 FR 37194, August 18, 1992), excludes from Subtitle C control hazardous debris that is treated using an extraction or destruction technology provided the treated debris meets the performance standards specified in § 268.45 Table 1. Our basis for doing this is that the debris no longer contains the hazardous waste. On the other hand, hazardous debris treated by an immobilization technology is still subject to the hazardous waste regulations because the Agency has insufficient data or information to support that such treated debris would not leach Appendix VIII constituents over time in a manner that would be protective to human health and the environment. In our proposal to the Phase I LDR rule, the Agency solicited comment on whether immobilized hazardous debris should be excluded from Subtitle C control. While the Agency received favorable comments on excluding such treated debris from the hazardous waste regulations, no information or data was provided to support such a position. Therefore, the final rule requires that immobilized hazardous debris continue to be managed as a hazardous waste.

The Agency decided to revisit the issue of whether immobilized hazardous debris, if treated in certain ways or is treated to meet certain limits, should be excluded from Subtitle C control. As a result, since the promulgation of the Phase I LDR rule, the Agency has undertaken a number of activities.

B. Roundtable Discussion

In an attempt to gather information on the issue, the Agency sponsored a roundtable discussion on August 3, 1992. Participants at the meeting included persons who commented on the Phase I LDR rule, debris treatment vendors, hazardous waste treaters and disposers, state officials, and officials from the Department of Energy (see Docket for specific list of attendees). Representatives from the environmental interest groups were also invited but were unable to attend. The purpose of the meeting was to gather information and discuss various regulatory approaches that would allow the Agency to exclude immobilized hazardous debris from Subtitle C control. While no specific data was gathered, there was a general discussion on the types of standards that could be applied such as design and operating standards, leach test, structural integrity test, permeability test for encapsulating material, so as to exclude immobilized hazardous debris from hazardous waste control. Additionally, the following points were also made by one or more participants at the roundtable.

- A number of the attendees indicated that even if immobilized hazardous debris were excluded from hazardous waste control, it would continue to be managed as a hazardous waste due to CERCLA liability concerns.
- There was some question whether a specific exclusion for immobilized hazardous debris was necessary or whether the Hazardous Waste Identification Rule (HWIR) may be a more appropriate mechanism for addressing this issue.
- A representative from the glass industry suggested that glass cullet and vitreous materials should have a separate treatment standard. He indicated that the glass matrix would

not leach lead at a higher rate than would an immobilized product—that is, it made little sense to grind up the glass material and then to stabilize it when the original matrix is just as sound.

While no consensus was reached, the following principles were generally arrived at by most of the participants at the meeting.

Microencapsulation: Participants at the meeting seem to believe that using a leach test may be more appropriate to demonstrate effective microencapsulation immobilization over an approach of developing design and operating standards. It was noted that treatment of hazardous debris is very waste and debris specific; if one could define design and operating standards that were generally applicable, they would likely be too burdensome in many cases.

Macroencapsulation/Sealing: The participants seem to indicate that the grinding requirement in the TCLP leach test made it inappropriate for predicting performance of macroencapsulation/sealing immobilization technologies. These technologies rely on an impermeable coating applied to the outside of the debris. Rather, the participants suggested a structural test to determine whether the given debris/technology combination was sufficient to maintain the coating or a permeability test for the coating media. While the participants conceptually believed that such an approach was workable, no one was able to suggest a specific test or standard. In addition, it was felt by some of the participants that the development of such a test could be difficult to develop.

While no data or information was provided at the meeting, it was indicated that if such information was submitted to the Agency, the Agency would consider such information in making its decision.

C. EPA Investigations

In addition to the above roundtable discussions, EPA has also been reviewing the literature and talking to vendors in an effort to obtain sufficient information on how to propose standards that could allow the exclusion of immobilized hazardous debris. At the time the Phase II LDR rule was proposed, no useful insights had been gained on how to specify design and operating standards that would ensure that immobilized hazardous debris was nonhazardous; the reason for this was the paucity of experience in immobilizing hazardous debris. Nevertheless, the Agency expressed interest in pursuing this area and specifically sought assistance from the regulated community on this issue.

D. Specific Questions for Which Comments Were Solicited

While the Agency had a better sense of the types of standards that may be appropriate for excluding immobilized hazardous debris from Subtitle C control at the time of the Phase II proposal, the Agency still did not have the data to propose specific exclusions. For microencapsulation in particular, if a leach test were the most appropriate mechanism for determining whether such treated debris is nonhazardous, the Agency expressed the belief that HWIR may be the most appropriate rulemaking to address this issue. The Agency had a series of studies underway, was evaluating comments, but was not in a position to determine what such levels were at that time. With respect to macroencapsulation/sealing, additional data or information needed to be gathered before the Agency would be in a position to exclude this type of immobilized hazardous debris. To assist the Agency in this effort, we specifically solicited comment on the following questions:

Microencapsulation:

- Is the use of a leach test for excluding immobilized hazardous debris more appropriate than specification of design and operating standards?
- Is exclusion of immobilized hazardous debris using design and operating standards workable?

Macroencapsulation/Sealing:

- What type of structural or other test could be used?
- What type of criteria should be applied in determining whether such debris is nonhazardous?

The Agency is also considering allowing stabilization for soils containing low levels of organic constituents, and solicited comment on whether similar stabilization techniques or tests to ensure the effectiveness of such stabilization would be appropriate for excluding debris from Subtitle C control.

In addition, the Agency specifically solicited comment on any available data or information to demonstrate that immobilized hazardous debris (if treated properly) would not pose a substantial hazard to human health and the environment, stating that if such information were submitted to the Agency, the Agency would exclude such debris from Subtitle C control.

E. Comments Received and Conclusions

Microencapsulation: One commenter stated that specifying design and operating standards is appropriate for excluding immobilized hazardous debris from subtitle C, asserting that nothing is gained in performing a leach test on hazardous debris. Other commenters suggested that EPA consider a combination of a structural test combined with a leaching test conducted on a representative intact sample of the encapsulated waste. None of these commenters submitted any supporting information to substantiate these conflicting claims. However, the commenters did agree that if a leach test is used, the TCLP as it is now defined is inappropriate for immobilized debris.

Macroencapsulation/Sealing: Several commenters claimed that the TCLP test is inappropriate for immobilized material because the size reduction required by the test protocol destroys the encapsulant, thereby defeating the purpose of the technology. These commenters suggested that EPA instead consider a combination of a structural test (a 50 psi standard was suggested) combined with a leaching test conducted on a representative intact sample of the encapsulated waste. These commenters did not submit any data to verify that a 50 psi standard would insure the integrity of the immobilized waste, and although some commenters recommended that a new leach test protocol be developed, they did not suggest any specific protocols for a leach test on the intact debris waste.

Exclusion of Immobilized Debris from Subtitle C Regulation: Several commenters maintained that debris treated with an immobilization technology should be excluded from Subtitle C regulation. However, these commenters did not submit any supporting data to verify this claim.

Two commenters claimed that a careful reading of 40 CFR 268.7(b) indicates that waste which is treated using a specified treatment technology is not subject to further testing to exit Subtitle C and claimed that the rules for debris treated in accordance with the alternative treatment standards specified in 40 CFR 268.45 should be the same. Their interpretation of this section of the CFR is incorrect. With regard to wastes for which technologies have been specified as the treatment standard, 40 CFR 268.7(b) contains the wording of the certification stating that the waste has been treated in accordance with § 268.42; this certification must be signed before the waste may be land disposed. 40 CFR 268.7(b) does not say that this waste is no longer subject to subtitle C regulation.

One commenter suggested that, at a minimum, EPA should establish health

based numerical standards for exclusion of hazardous debris from subtitle C. This commenter made no suggestion as to what test method should be used. The issue of basing LDR standards on the basis of risk rather than technology performance is addressed in Section III A 2 a of this rule, "Risk-based Universal Treatment Standards."

Finally, one commenter suggested that EPA allow the use of stainless steel as an encapsulant, claiming that its performance would be superior to that of other encapsulants, such as polymeric organics, which allegedly fail due to the radiation effects to their chemical bonds.

Conclusions: Although commenters were in general agreement on a number of issues (e.g. inappropriateness of the TCLP for debris, use of a 50 psi structural test as a performance standard, use of a leach test performed on intact debris), no supporting data or other information was submitted to support their claims and requests. Therefore, the Agency is not promulgating any modifications to the debris rule at this time. The Agency is evaluating exclusions as part of the HWIR process and will reassess appropriate action on debris if HWIR does not adequately address debris.

VIII. Deep Well Injection Issues

A. Prohibition of Dilution of High TOC Ignitable and of TC Pesticide Wastes Injected Into Class I Deep Wells

Today's rule prohibits the disposal of two types of waste into deep-well injection via Class I Underground Injection Control (UIC) wells unless the wastes first meet the land disposal restrictions promulgated in today's rule for these wastes, or the wastes are injected into a well that is subject to a no-migration determination. These wastes are nonwastewaters exhibiting the characteristic of ignitability at the point of generation and containing greater than 10 percent Total Organic Carbon ("high TOC ignitable liquids subcategory") and also TC toxic halogenated pesticide wastes (DO12–D017). Thus, EPA is promulgating, as proposed, regulations excluding these two wastes from the portion of the rule at 40 CFR 268.1(c)(3) that allows a waste to be injected into a Class I deep injection well if the waste no longer exhibits a characteristic at the point of injection. Today's rule also includes a one-year capacity variance for these injected waste streams.

For D001 High TOC ignitables, the treatment standard is expressed as methods of treatment that must be used prior to land disposal: combustion (i.e. incineration or fuel substitution) or recovery of organics. The preamble to the proposed rule stated that high TOC ignitable nonwastewaters contain high concentrations of organics that can either be recovered directly for reuse, or can be burned in combustion devices. These wastes are not injected in significant volumes, so that redirection of the wastes to treatment technologies will not have significant impact on well operators. 58 FR 48118–48119. EPA received no information to the contrary from commenters.

The treatment standards for TC pesticide wastewaters are also expressed as methods of treatment: biodegradation or incineration. On the other hand, the treatment standards for EP pesticide nonwastewaters are expressed as levels that may be achieved by using any treatment technology, other than impermissible dilution. (The Third Third rule had already disqualified these wastes from the exception that allowed dilution of characteristic wastes that were to be managed in Clean Water Act treatment systems including surface land disposal units, § 268.3(b) and 55 FR 22657.)

As discussed at length in the preamble to the proposed rule, the Agency's initial reading of the D.C. Circuit Court's decision is that wastes that are characteristically hazardous at the point of generation must typically be treated to destroy or remove hazardous constituents before land disposal, or be disposed of in a no-migration unit. 976 F.2d at 24. This is certainly a permissible interpretation of the opinion. Furthermore, the decision encompasses underground injection wells, specifically Class I deep wells, since they are permanent land disposal units. 976 F.2d at 25. Thus, under this reading of the court's opinion, these ignitable and pesticide wastes would have to be treated to remove hazardous constituents before injection.

EPA's decision to prohibit injection of these untreated wastes, however, is based not only on its initial interpretation of the Chemical Waste Management opinion (which, as noted below, may still evolve), but also on the particular wastes involved here. The wastes at issue are ignitable wastes with potentially very high concentrations of hazardous constituents, and pesticide wastes containing very toxic constituents.

Treatment is also warranted to reduce the amounts of these toxic wastes being land disposed. RCRA section 1003(a)(6) ("statutory goal of minimizing the . . . land disposal of hazardous waste by encouraging . . . properly conducted recycling and reuse, and treatment"); *Steel Manufacturers' Association* v. *EPA*, _____ F.3d _____, (D.C. Cir. July 9, 1994) ("We conclude that minimizing the overall volume of slag that is to be disposed is by itself, a sufficient justification for the zinc treatment standard . . .") (slip op. at 13). Finally, only small volumes of these wastes are injected, and segregation of the wastes should not prove to be unduly difficult. For all of these reasons, the Agency believes it appropriate to prohibit injection of these wastes at this time, unless the wastes are treated to satisfy section 3004(m) or are disposed in a no-migration unit. In this regard, the Agency emphasizes that no-migration petitions for Class I nonhazardous wells receiving decharacterized wastes may be submitted to EPA or the Authorized States for evaluation at this time. The petitions may encompass not only the pesticide and high-TOC ignitable wastes prohibited in this rule, but other types of decharacterized wastes (which are not yet prohibited but are scheduled to be addressed in Phase III) as well.

Most comments to the proposed rule requested independent consideration of Class I injection wells, because they believed that underground injection differs from other forms of land disposal, such as landfills and impoundments. Other comments questioned EPA's interpretation of the Third Third court decision and the Agency's belief that treatment of these waste streams should be the preferred management approach for them. These commenters indicated that aggregation of waste streams meets the minimize threat standard and expressed their opinion that segregation of these wastes for treatment poses substantial risks to the environment and that underground injection is an inherently safer waste management practice. The Agency intends to consider all the above arguments (e.g., risks posed by wastes going to deep well injection) in the identification of alternatives for land disposal standards. The Agency will continue to investigate any and all information received concerning these comments, and intends to address land disposal standards for underground injection of characteristic wastes in a comprehensive manner in the Phase III rulemaking. Until these treatment standards become effective one year from the date of publication of this rule, they may continue to be injected into Class I injection wells without prior treatment.

B. Request for Comment on Petition From Chemical Manufacturer's Association Regarding Deep Well Injection of Ignitable and Corrosive Characteristic Wastes

The proposed rule solicited comments on a request from the Chemical Manufacturer's Association (CMA) that EPA develop separate treatment standards intended for those wastes disposed in Class I deep injection wells. CMA requested a separate set of treatment standards for ignitable and corrosive wastes managed by deep well injection that, in view of the unique circumstances of deep well injection, meet the statutory "minimize threats" standard. Many comments received by EPA urged the Agency to develop so-called UIC-specific treatment standards in light of this petition. However, EPA received virtually no technical information to support these comments.

Therefore, the Agency is not issuing a final response to CMA's request in today's rule. EPA continues to solicit information necessary to enable EPA to act on this petition in the future. These requests are documented in the rulemaking docket for today's rule. In particular, the Agency particularly requests data concerning waste volumes, waste transport, injection system integrity or the fate of disposed pollutants throughout the course of the injection procedure.

IX. Modifications to Hazardous Waste Recycling Regulations

A. Introduction

Today's rulemaking finalizes the proposed changes to the hazardous waste recycling regulations, thus slightly broadening the scope of an existing exclusion (and related variance). This modification of the regulatory framework will allow for environmentally beneficial recycling to occur without unnecessary regulatory consequences.

EPA wishes to note that the changes to the definition of solid waste being promulgated today are narrow in scope and will have minor impact. A more broad-ranged evaluation of the regulations applicable to the recycling of hazardous waste is being conducted by EPA's Definition of Solid Waste Task Force. This Task Force has been administering a public dialogue process to examine the overall impacts of the RCRA program on recycling, and will consider broader changes to the definition of solid waste as part of that process.

B. Modification of the Existing "Closed-loop" Recycling Exclusion and Related Case-specific Variance

1. "Closed-loop" Recycling Exclusion and Related Variance

In the January 4, 1985 final rule, the Agency promulgated an exclusion from the definition of solid waste at § 261.2(e)(1)(iii) for secondary materials that are recycled in a "closed-loop," (i.e., returned to the original production process in which the material was generated (see preamble discussion at 50 FR 639)). To be considered such a "closed-loop" process, three conditions must be met. First, the secondary material must be returned to the original process without undergoing significant alteration or reprocessing (i.e., it must be returned without first being reclaimed. See 261.2(e)(3) and Table 1). Second, the production process to which the unreclaimed materials is returned must be a primary production process (i.e., a process that uses raw materials as the majority of its feedstock, as opposed to a secondary process that uses spent materials or scrap metal as the majority of its feedstock). And third, the secondary material must be returned as a feedstock to the original production process and must be recycled as part of that process (as opposed to an ancillary process such as degreasing). EPA believes that these conditions characterize a material that is part of an on-going production process, and as such, the management of the material should not be characterized as waste management (i.e., the material is not part of the waste management problem).

Today's action addresses the second condition—that the production process to which a secondary material is returned be a primary process. This condition was part of the original exclusion due to considerations regarding jurisdiction, as it was understood in 1985, rather than to an evaluation of the potential impacts on the environment from such "closed-loop" recycling involving secondary processes. This condition thus was established without a consideration of whether such secondary materials would be part of the waste management problem. By definition, a secondary process uses waste materials as its principal feedstock. The Agency therefore concluded that the process residue, which is returned to the original process as a substitute for feedstock that is itself waste, is no less a waste than the waste material originally introduced (see 50 FR 639). (The Agency notes that with few exceptions, this condition has no actual impact on the recycling of residues from secondary processes because such residues that exhibit a characteristic of hazardous waste (i.e., characteristic by-products and sludges) are likewise excluded from the definition of solid waste if reclaimed.)

Although the Agency continues to believe that the jurisdictional logic behind this condition is sound, the judicial opinions regarding RCRA jurisdiction allow more weight to be given to environmental considerations. *API* v. *EPA (API)*, 906 F.2d at 740–41; *AMC* v. *EPA (AMC II)*, 907 F.2d 1179, 1186 (D.C. Cir. 1990). Thus, EPA has reevaluated this condition of the exclusion from the definition of solid waste due to its impact on the recycling of residues from secondary processes, in particular secondary lead smelters, and has determined that the condition of a closed-loop involving only primary processes is not legally compelled, and that this condition is less relevant as an environmental consideration, assuming that the secondary material is well-managed prior to reprocessing in the primary or secondary process that generated it.

Comments received on the Agency's proposal to remove this condition from the exclusion were favorable. Although several commenters said that the Agency should go further in modifying the existing regulations to encourage the recycling of hazardous wastes, such an action is beyond the scope of this proceeding. Such further action could result from the efforts currently underway to reevaluate the regulations applicable to hazardous waste recycling (i.e., the Roundtable discussions undertaken by the Definition of Solid Waste Task Force). One commenter also urged the Agency to make regulatory modifications only as part of the Definition of Solid Waste Task Force. EPA does not view the salutary and relatively modest change to the rules promulgated here as undermining the Task Force effort, and so is adopting the amendment.

Thus, the Agency is today removing this condition (i.e., that the process be a primary production process) from the "closed-loop" recycling exclusion. By doing this, secondary materials that are recycled back into the secondary production process from which they were generated are excluded from the definition of solid waste.

Following the same reasoning, the Agency proposed and is today finalizing a modification to section 260.30(b) a related case-by-case variance for materials that are reclaimed prior to reuse in the original primary production process from which they were generated

(see 50 FR 652 (January 4, 1985) for a discussion of the existing variance). This modification similarly expands the variance to make it available for materials that are returned to secondary processes, as well as those returned to primary processes.

2. Storage Prior to Recycling

At proposal, the Agency proposed to condition the "closed-loop" exclusion (and the related 260.30(b) variance) such that secondary materials recycled back into secondary processes from which they were generated would continue to be managed in an environmentally sound manner. The Agency proposed this condition to address concerns that, absent this condition, a listed waste that would otherwise be required to be managed in a protective manner (e.g., without direct placement on the land) could begin to be managed in an unprotective manner because, as an excluded secondary material, no regulatory requirements would apply. Storage of hazardous secondary materials on the land can be deemed to be a type of discarding ("part of the waste disposal problem" in the words of the D.C. Circuit), and hence provide a basis for classifying the materials as solid and hazardous wastes. *AMC II*, 907 F.2d at 1187. The only comments received addressing this proposed condition asked for more clarification of what would be considered "a protective manner." The Agency is promulgating the condition to the exclusion that such secondary materials be managed in a protective manner such that there is no placement on the land, that is no land disposal as defined in § 3004(k). See § 261.4(a)(10) and (11) where EPA has attached this same condition to comparable exclusions. Management that is designed to contain the material or otherwise prevent its release to the environment, such as in a containment building (see 40 CFR 264.1100) or tank, is permissible. The Agency believes that this condition will not require any changes in how these secondary materials are currently managed and will ensure that providing regulatory relief will not unintentionally increase risk to human health and the environment.

Additional changes were proposed and are being promulgated in this rule in order to implement and be consistent with the changes in variances discussed above. Previously the Regional Administrator granted variances from classification as a solid waste in 40 CFR 260.30, 260.31, 260.32, and 260.33. Today's rule transfers this authority to grant variances from the Regional Administrator to the Administrator. The changes in §§ 260.30 and 260.31 are necessary because such variances involve determining RCRA jurisdiction over secondary materials going to secondary processes. The other changes in authority to grant variances in §§ 260.32 and 260.33 are being made in order to be consistent with the provisions of §§ 260.30 and 260.31.

X. Compliance Monitoring and Notification

A. Compliance Monitoring

As proposed, the Agency is adopting an approach that will allow generators and facilities that manage organic toxicity characteristic (TC) wastes in systems other than those regulated under the Clean Water Act (CWA), those engaged in CWA-equivalent treatment prior to land disposal, and those injecting into Class I deep injection wells, to monitor or otherwise determine the presence of underlying hazardous constituents "reasonably expected to be present" in their waste. (See definition at 268.2(i).) This means that regulated entities do not have to ascertain the presence of all hazardous constituents for which EPA is promulgating a universal treatment standard. Generators may base this determination on their knowledge of the raw materials they use, the process they operate, and the potential reaction products of the process, or upon the results of a one-time analysis for the entire list of constituents at § 268.48.

The Agency solicited comment on whether generators should be required to do some testing of organic TC wastes to determine what underlying hazardous constituents are present and whether they meet UTS. Furthermore, the Agency noted that generators who also treat (including generators who decharacterize their waste but do not treat for underlying hazardous constituents) are classified as treaters, and would therefore be required to do some analysis of their wastes pursuant to § 268.7(b) and prepare a treater's certification pursuant to § 268.9(d) (58 FR 48134). A few commenters believed that generators should have to test their organic TC wastes at least once. Most commenters on this issue, however, strongly opposed a generator testing requirement and said that generators should be allowed to use knowledge of their wastes to make such a determination. Based on these comments, and the Agency's reluctance to require generator testing of characteristic wastes but not listed wastes, the Agency is not imposing a testing requirement on generators of organic TC wastes at this time.

The Agency believes, however, that certifications should identify which hazardous constituents may be present in the waste. This is necessary in order that there be some record that the waste indeed requires treatment of these constituents before it can be land disposed. As explained below, existing regulations already require mention of the presence of underlying hazardous constituents in some situations. EPA is slightly amending those regulations today to make the requirement uniform, as discussed below.

If a generator does not treat a prohibited characteristic waste, then the generator must prepare the standard notification and certification required by § 268.7(a)(1) (for wastes that have not been treated to meet the treatment standard) (see § 268.9(d), first clause). These requirements explicitly require mention of underlying hazardous constituents (§ 268.7(a)(1)(ii)).

If a generator partially treats a waste, however, for example by decharacterizing it but not treating the underlying hazardous constituents, there is a slight gap in the existing rules. Those rules require that a one-time notification and certification be prepared (§ 268.9(d)) and that the certification "must state the language found in 268.7(b)(5)" (§ 268.9(d)(2)). The § 268.7(b)(5) certifications, however, do not contemplate the possibility that wastes may require additional treatment for underlying hazardous constituents. To allow for this possibility, EPA is amending § 268.9(d) to state that in the event underlying hazardous constituents in a decharacterized waste have not been fully treated, the certification shall so state. EPA is also adding the following new certification to § 268.7(b)(5) to account for this circumstance:

> I certify under penalty of law that the waste has been treated in accordance with the requirements of 40 CFR 268.40 to remove the hazardous toxicity characteristic or the characteristics of ignitability and corrosivity. This decharacterized waste contains underlying hazardous constituents that require further treatment to meet universal treatment standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

The Agency proposed, alternatively, that generators could be required to certify what underlying hazardous constituents are in the organic TC waste and whether they meet treatment standards, in a manner similar to the existing certification requirement for generators of wastes that meet the

treatment standards as generated (see 40 CFR 268.7(a)(2)(ii)) (58 FR 48134). This suggestion was generally not supported by commenters, and EPA is not adopting this approach in this final rule. Before considering broader changes, EPA will see if the amended requirement in § 268.9(d)(2)(i) discussed above is sufficient to create an adequate record.

B. LDR Notification

1. Constituents To Be Included on the LDR Notification

EPA solicited comment on how to limit the underlying hazardous constituents that must be monitored in organic TC wastes, and consequently reported on the LDR notification. Commenters on this issue said that the regulated community should only be required to address those constituents which are in the organic TC wastes as generated, prior to any subsequent mixing with other wastes. This is the approach being adopted in this rule. Such an approach is identical to the approach adopted in the May 24, 1993 Interim Final Rule (58 FR 29873) and is supported by commenters.

As a simplifying measure, EPA is also slightly amending the language of § 268.7(a)(1)(ii) and § 268.7(b)(4)(ii). The language in these paragraphs required that the hazardous constituents in F001–F005 spent solvents, F039, wastes subject to the California list provisions of § 268.32 or RCRA section 3004(d), and underlying hazardous constituents in characteristic wastes be listed on the LDR notification. This language is being changed so that if all the hazardous constituents are present in the waste (and thus the generator/treater will be treating all the constituents), then there is no longer a need to list all the constituents on the notification form. If, however, a subset of constituents are present in the waste (and thus the generator/treater will only be treating these constituents), the constituents in the waste must continue to be listed on the notification form.

2. Management in Subtitle C-Regulated Facilities

The Agency has information that many of the organic TC wastes that are not managed in CWA, or SDWA systems are being treated in hazardous waste management units (primarily incinerators) subject to RCRA subtitle C. In such a case, the notification, certification, and recordkeeping requirements set out in 40 CFR 268.7 apply (which includes identification of the underlying hazardous constituents reasonably expected to be present in the organic TC waste). For organic TC wastes, once the waste is no longer hazardous, however, further recordkeeping and documentation requirements are set out in 40 CFR 268.9. Section 268.9 requires that the generator or treater (including generators who treat, see 51 FR 40598, November 7, 1986) prepare a one-time notification which is sent to the EPA Region or authorized state and also kept in the generator's or treater's files. Treaters must certify that they are familiar with the treatment process used at their facility and that the process can successfully treat the waste to meet the treatment standards without impermissible dilution. See § 268.7(b)(5), which applies to persons who treat formerly characteristic wastes (see existing § 268.9(d)(2)). The Agency believes that, normally, at least some waste analysis is needed to make a good faith showing for meeting the treatment standards, given the number of hazardous constituents that could be covered by those standards.

3. Potential Management of Decharacterized Wastes at a Subtitle D Waste Management Facility

The Agency solicited information on certain potential waste management practices for decharacterized TC wastes to help determine whether new notification requirements are needed. In particular, EPA requested whether generators or treaters, after removing the characteristic, send the decharacterized TC waste off-site to a Subtitle D (nonhazardous waste) treatment facility for further treatment to address the underlying hazardous constituents (58 FR 48134). The Agency solicited comment on potential enforcement concerns if there is not a federal requirement that generators notify Subtitle D treatment and disposal facilities receiving decharacterized wastes.

One commenter stated that the generator of the waste should be made responsible through an EPA mandate to assure that treatment of underlying hazardous constituents at a subtitle D facility meets LDR treatment standards. Other commenters thought that the generator should notify the subtitle D facility of the underlying hazardous constituents, but they did not specify that a mandated notification should be required. However, other commenters said that existing arrangements between generators and off-site treatment facilities would suffice because EPA already requires generators to notify the EPA Regional office or Authorized State when it is sending decharacterized waste to a subtitle D facility under 40 CFR 268.9. One commenter pointed to the contract between the generator and the subtitle D facility as the mechanism by which generators would notify the treatment facility of what underlying hazardous constituents are in the waste.

Only one commenter offered information on the extent that the practice of sending decharacterized wastes to a nonhazardous waste treater for treatment of underlying hazardous constituents is actually occurring. This commenter asked generators who send waste to their facilities how often they remove the characteristic prior to sending the decharacterized waste to a nonhazardous waste treatment facility for treatment of underlying hazardous constituents. They found that roughly 2–3 percent of the wastes from their survey group were decharacterized D001 and D002 wastes being sent off-site for further treatment at a nonhazardous waste treatment facility that employs CWA wastewater treatment or stabilization of underlying hazardous constituents. The commenter added, however, that there will be less decharacterized TC wastes going off-site for treatment of underlying hazardous constituents because these wastes require more sophisticated treatment systems to remove the characteristic than do the D001 and D002 wastes.

Based on this information, the Agency has decided, for the time being, not to impose new notification requirements in today's final rule (a new certification is being added in this rule to § 268.7(b)(5)(iv) as described above). The Agency continues to believe that very little decharacterized TC wastes will be sent to a subtitle D facility for treatment of underlying hazardous constituents. If such a practice should occur, generators and Subtitle D facilities have substantial incentives (such as CERCLA liability) to exchange and verify compliance with treatment standards for underlying hazardous constituents independent of federal notification requirements.

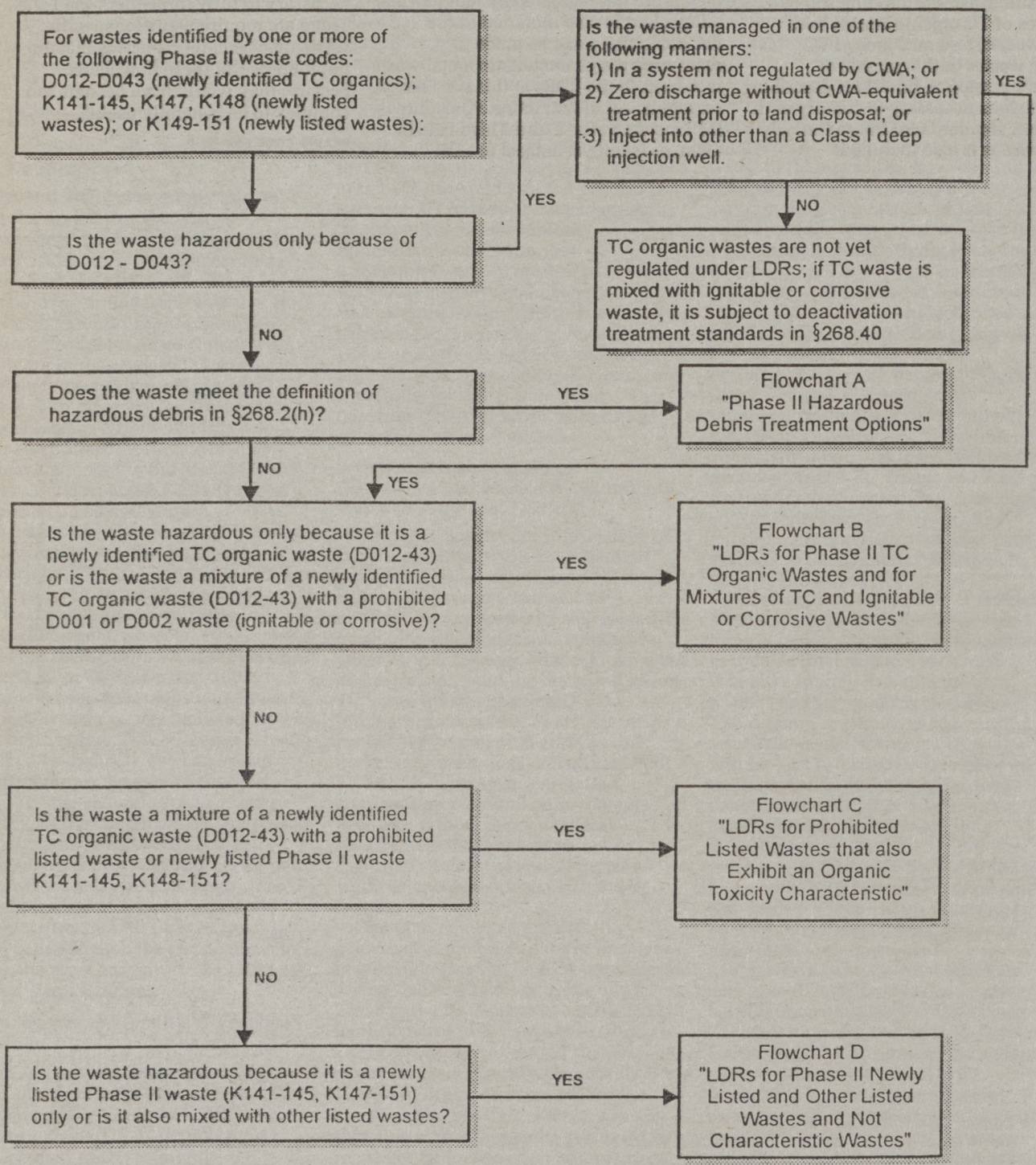
If, however, information becomes available that generators are sending substantial amounts of decharacterized TC wastes off site to subtitle D facilities for treatment of underlying hazardous constituents, or that there is a paperwork loophole that existing arrangements between generators and treatment facilities do not address, today's approach will be revisited to determine whether such tracking is necessary to assure "cradle to grave" tracking of wastes and better informing subtitle D treatment and disposal companies of the requirements to which these decharacterized wastes remain subject.

XI. Implementation of the Final Rule

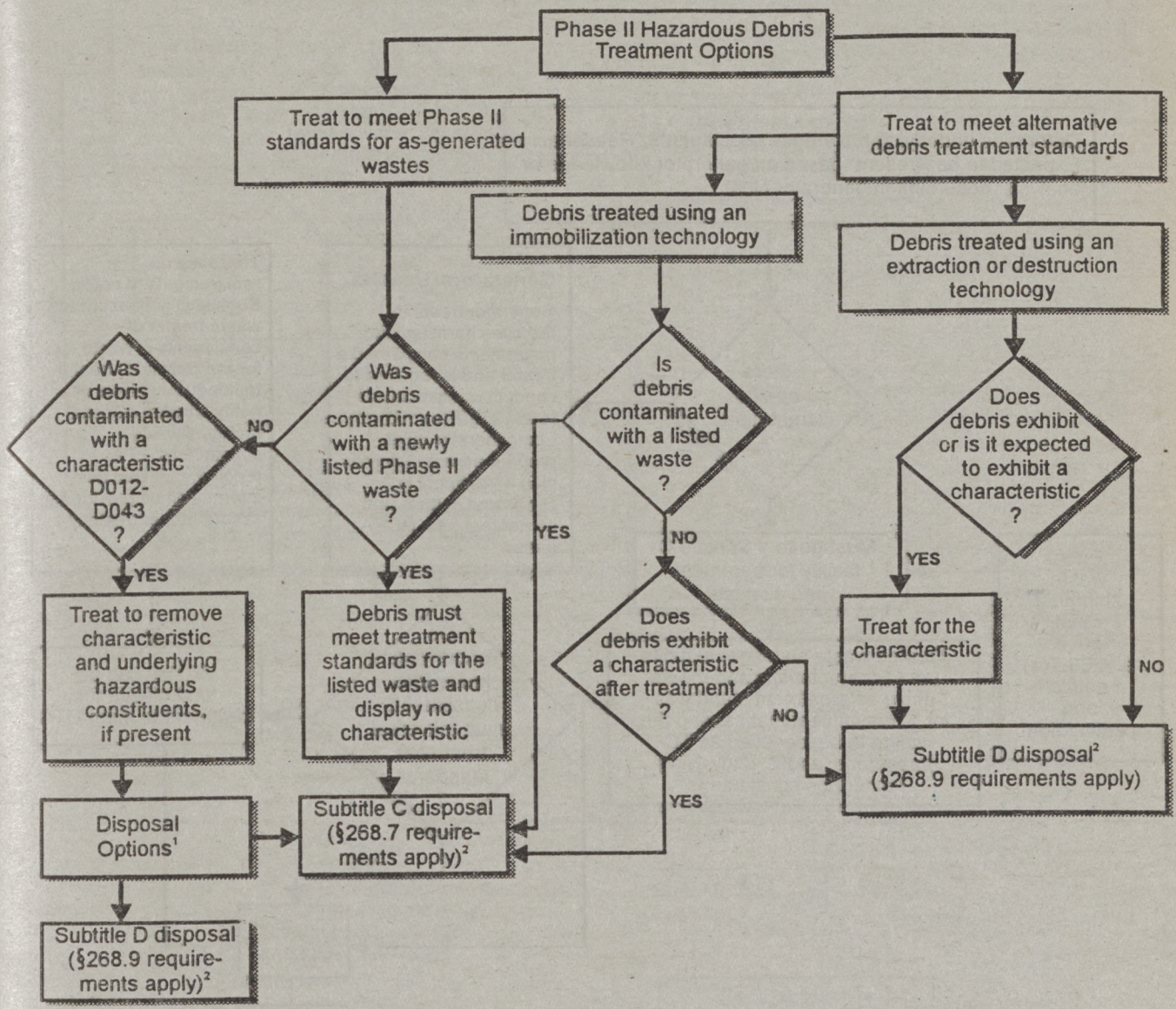
This section presents flowcharts of what EPA expects will be the most frequent set of decisions that must be made to implement the regulations for TC organic wastes (including soils), mixtures of TC organic wastes with listed wastes, and mixtures of TC organic wastes with ignitable or corrosive wastes. A flowchart describing the decisions necessary to comply with treatment standards for Phase II newly listed wastes is also included Additionally, a flowchart is presented that outlines the decisions necessary to comply with treatment standards for debris contaminated with Phase II wastes. And, as a reminder that TC metals are not regulated by today's rule, a flowchart is also included of the decisions that must be made to determine if a characteristic metal waste is subject to the LDRs at this time based on regulation of Extraction Procedure (EP) metals in the Third Third rule in 1990, or is not yet subject to LDR regulation because TC metals will not be addressed until a later rulemaking. These flowcharts present only the major decisions that must be made; a thorough reading of the regulations will be necessary to fully implement the LDRs. There are requirements for specific waste management scenarios that are not included in these flowcharts because they would have become too complex to be generally useful.

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Implementation of Key Phase II LDRs



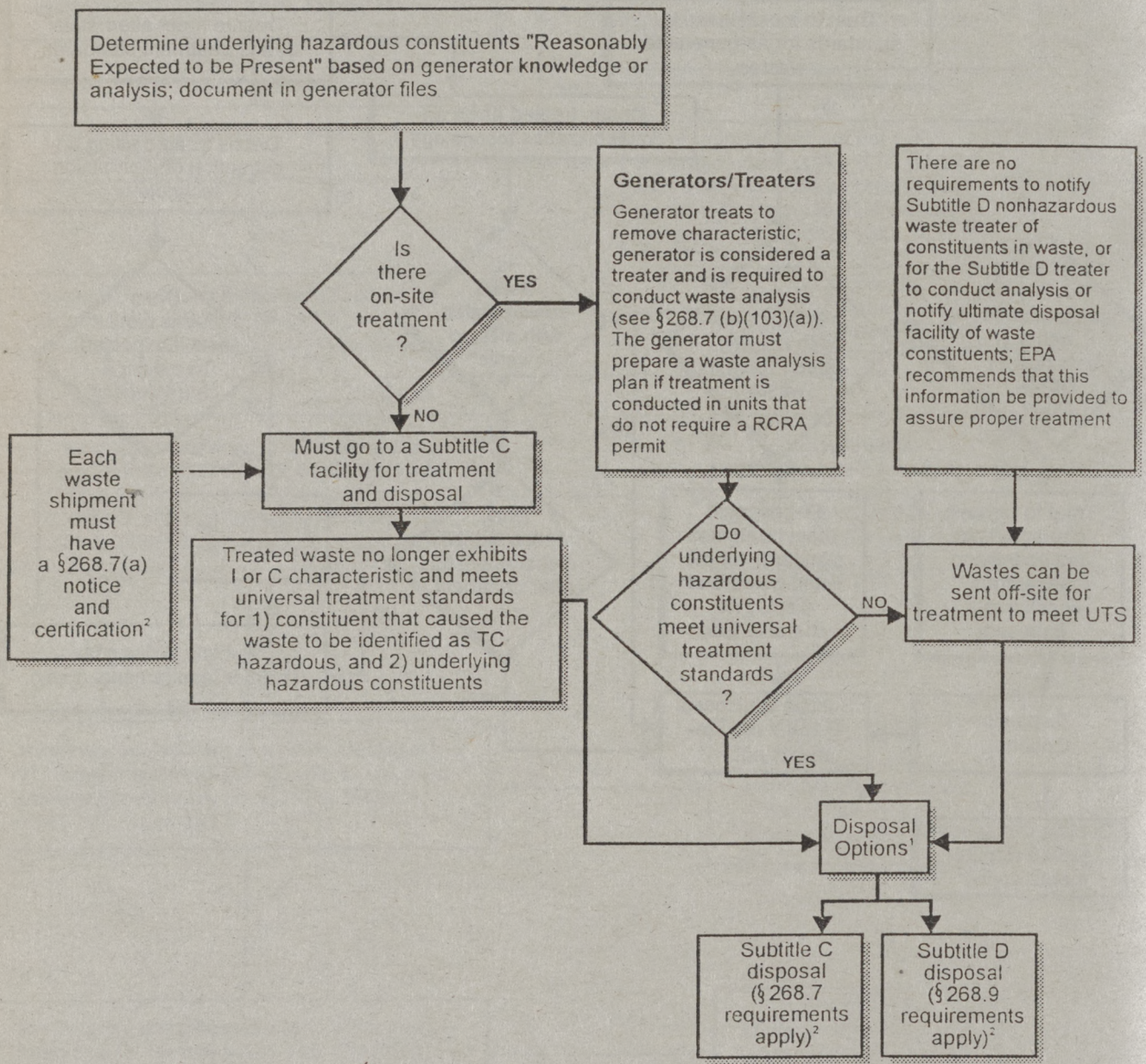
Flowchart A
Phase II Hazardous Debris Treatment Options



[1] *Treaters have the option of disposing of their treated wastes in either a Subtitle C or a Subtitle D facility.*

[2] *See Part 268, Appendix X, Table 1 for a detailed summary of all notification and certification requirements under §268.7 and §268.9*

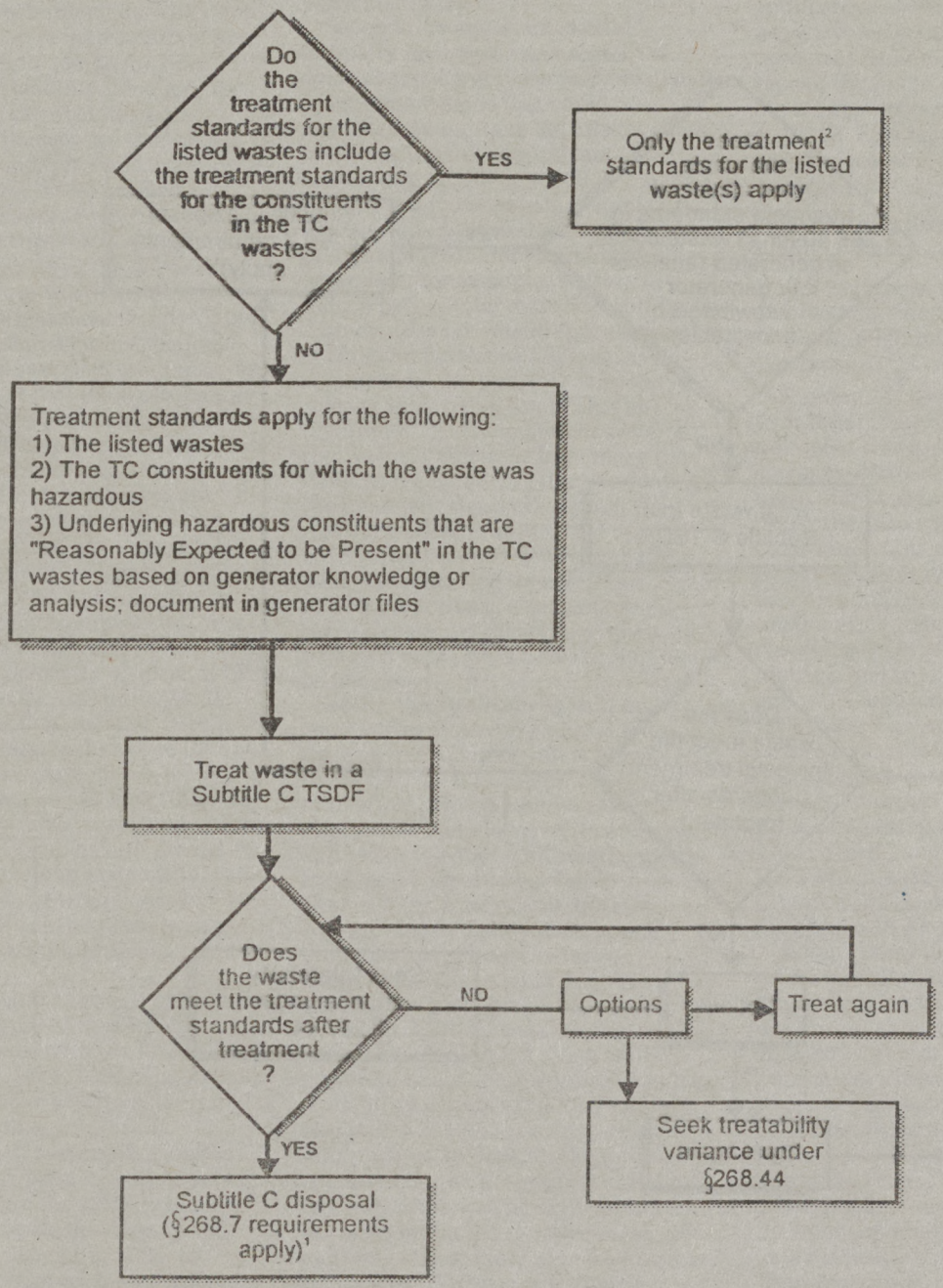
Flowchart B
LDRs for Phase II TC Organic Wastes and for Mixtures of TC and Ignitable or Corrosive Wastes



Treaters have the option of disposing of their treated wastes in either a Subtitle C or a Subtitle D facility

See Part 268, Appendix X, Table 1 for a detailed summary of all notification and certification requirements under §268.7 and §268.9

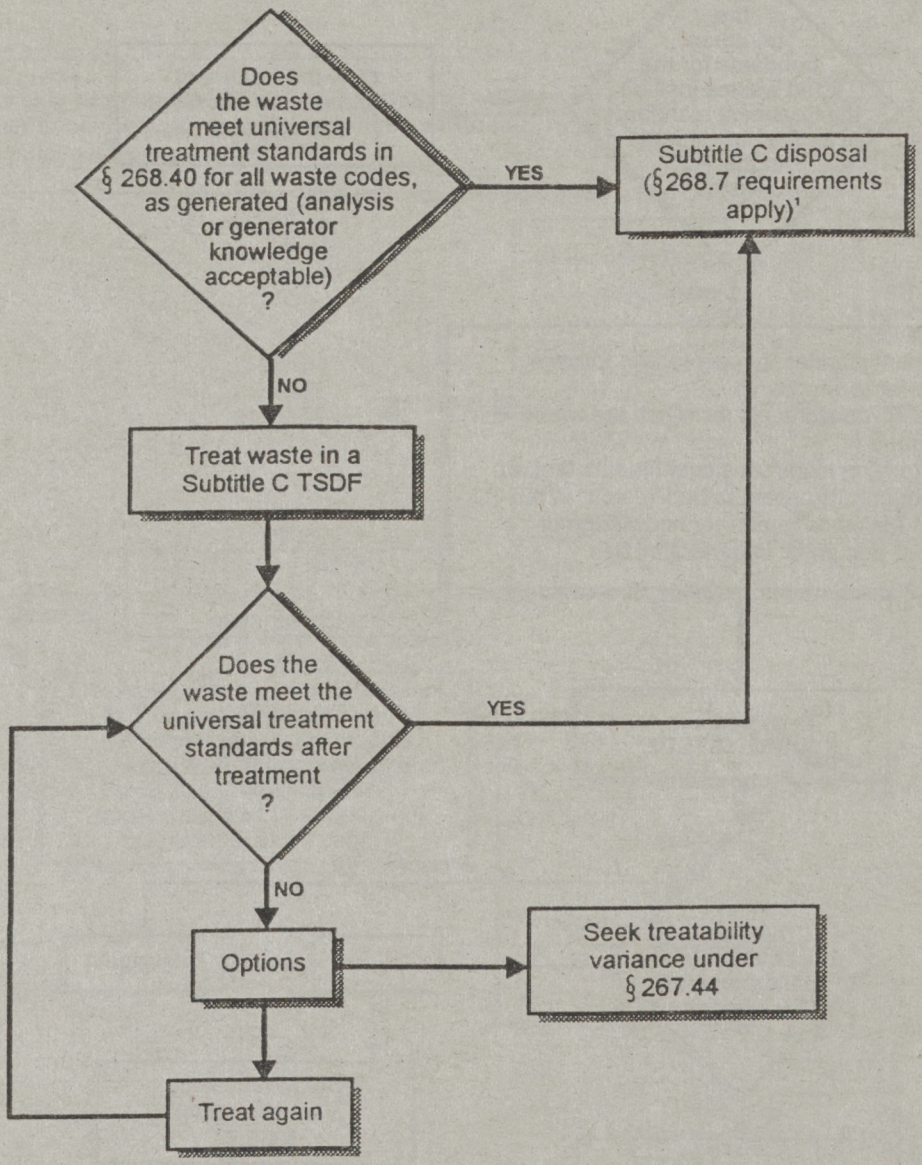
Flowchart C
LDRs for Prohibited Listed Wastes that also Exhibit an Organic Toxicity Characteristic



See Part 268, Appendix X, Table 1 for a detailed summary of all notification and certification requirements under §268.7 and §268.9

[2] *For as-generated wastes; would not apply when a TC organic waste is intentionally mixed with a listed waste (in this case the treatment standards for the underlying hazardous constituents in the TC waste and the regulated constituents in the listed waste would apply).*

Flowchart D
LDRs for Phase II Newly Listed and Other Listed Wastes and Not Characteristic Wastes



See Part 268, Appendix X, Table 1 for a detailed summary of all notification and certification requirements under §268.7 and §268.9

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XII. Guidance to Applicants for Treatability Variances for As-Generated Wastes

The Agency's existing regulations provide for variances from treatment standards if a waste cannot be treated to the specified treatment standard or if the treatment technology on which the standard is based is inappropriate for the waste. Section 268.44 (a). For guidance on treatability variances for soil, including site-specific, non-rulemaking variances, see section I.E. "Treatment Standards for Hazardous Soil" in this rule. To be granted a treatability variance, a petitioner must show that "because the physical or chemical properties of the waste differs significantly from wastes analyzed in developing the treatment standard, the waste cannot be treated to specified levels or by the specified methods." *Id.* A demonstration that the waste cannot be successfully treated can be made "by showing that attempts to treat the waste by available technologies were not successful, or through appropriate analyses of the waste which demonstrate that the waste cannot be treated to the specified levels." 51 FR at 40606 (Nov. 7, 1986). EPA evaluates treatability variance requests by "first look[ing] at the design and operation of the treatment system being used. If EPA determines that the technology and operation are consistent with BDAT, the Agency will evaluate the waste to determine if the waste matrix and/or physical parameters are such [that] the BDAT properly reflects treatment of the waste." *Id.* The guidance set out below applies exclusively to treatability variances (for as-generated wastes) evaluated by EPA headquarters and processed pursuant to rulemaking procedures.

In order to settle a lawsuit challenging the Agency's grant of treatability variances to two particular facilities, 56 FR 12351 (March 25, 1991), the Agency has agreed to provide some clarifying guidance regarding treatability variances, which essentially restates existing Agency practice and does not call into question the validity of any treatability variance the Agency has issued. First, as stated in 1986, to support an application for a treatability variance pursuant to § 268.44(a) for process waste, the applicant should collect and analyze a sufficient number of samples of the untreated waste to accurately characterize it. 51 FR at 40606 (Nov. 7, 1986). In general, the Agency would expect the applicant to collect and analyze four samples of its untreated and treated waste. (This corresponds to the minimum number of samples applicants for delisting pursuant to 260.20 must submit.) However, the exact number of samples would be determined by EPA as part of the Agency's evaluation of each treatability variance application (and so could be less than four samples in a particular case).

Second, the applicant should normally investigate and report on demonstrated and reasonably available pretreatment steps that could significantly improve the effectiveness of the treatment the applicant is conducting. 51 FR at 40606. What the Agency has in mind is that applicants not overlook potentially simple types of pretreatment to remove an interfering parameter; for example, settling to reduce excess total dissolved solids. The Agency does not intend that applicants perform an extensive or expansive engineering analysis. Nor does the Agency intend that applicants be required to utilize treatment systems significantly different from those the Agency evaluated when promulgating the treatment standard. Rather, the Agency wishes to assure that applicants not overlook some relatively obvious means of removing interferences. Again, in particular cases, it may not make sense to conduct this type of analysis, in which case no such evaluation would be necessary.

Third, the applicant should make a good faith effort to explain why the treatment standard is not achievable for its waste. 51 FR at 40606. This good faith effort is to be based on the applicant's knowledge of its process, and is not to entail additional expense (such as a consultant's engineering analysis). As a general matter, the Agency simply believes that some thought should be given (and documented) as to what might be causing the problem.

Finally, EPA's general policy has been and will be to publish a notice of its proposed decision on applications for treatability variances in the **Federal Register**, § 261.44 (e), and to allow a minimum of 30 days for the public to comment on the proposal. 51 FR 40607. All applicants will have the opportunity to comment on the reasonableness of applying one or more of these foregoing statements of guidance to their applications, and, as a result, EPA may decide not to apply them.

EPA notes further that there have been only a handful (fewer than 10) of applications for treatability variances since implementation of the land ban (aside from applications relating to contaminated media and debris), of which EPA has granted three. In the applications relating to electroplating wastes cited earlier, the Agency inferred that something about the applicants' wastes was making the wastes more difficult to treat than the waste EPA evaluated when promulgating the applicable treatment standard. This inference was based on the fact that the applicants were treating the waste with properly designed and operated BDAT treatment technology, namely the same type of treatment technology on which the treatment standard is based. 56 FR at 12352. EPA emphasizes that this type of inference was, and remains, permissible.

XIII. Clarifications and Corrections to Previous Rules

A. Corrections to the Interim Final Rule Establishing Land Disposal Restrictions for Certain Ignitable and Corrosive Wastes

On May 24, 1993, the EPA published an interim final rule establishing treatment standards for ignitable and corrosive characteristic wastes except those disposed in facilities regulated under the Clean Water Act (CWA), or Class I injection wells subject to the Safe Drinking Water Act, or zero-discharge facilities engaged in CWA-equivalent treatment. In today's rule, the Agency is clarifying that the provisions of the interim final rule remain in effect unless and until they are superseded in future LDR rules. The Agency does not plan to issue a final rule at this time; however, it is using the comments received on the interim final rule in developing future rules concerning the portions of the Third Third Land Disposal Restrictions Rule which were remanded by the D.C. Circuit (for discussion of the court ruling, see 58 FR 29861).

Among other things, the interim final rule established treatment standards for the underlying hazardous constituents reasonably expected to be present in the affected wastes at the point of generation. These treatment standards were the concentration levels for the constituents found in F039 (multisource leachate) wastewaters and nonwastewaters. The Agency is clarifying here that the universal treatment standards (UTS) established today supersede the F039 standards. Therefore, underlying hazardous constituents in the ignitable and corrosive wastes covered by the interim final rule must meet the 40 CFR 268.48, Table UTS—Universal Treatment Standards, levels before they can be land disposed. This change is being made simply so that the references to treatment standards for underlying hazardous constituents in ignitable and corrosive wastes in the interim final rule

will be the same as those established for organic TC wastes in today's rule.

Also in the interim final rule, the Agency promulgated requirements to address a concern raised by the court about the potential for volatile organic constituent (VOC) emissions to create violent reactions during the dilution of ignitable and reactive wastes (see 58 FR 29873). The regulatory language in §§ 264.1(g)(6) and 265.1(c)(10), however, inadvertently promulgated requirements for ignitable (D001) wastes and corrosive (D002) wastes. These sections are being corrected in today's rule to indicate, rightly, that the requirements apply to ignitable (D001) and reactive (D003) wastes.

B. Corrections to the Phase I Rule Establishing Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris

Today's rule clarifies several issues from the final rule establishing Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris (57 FR 37194, August 18, 1992).

The first issue being corrected responds to questions over which treatment standards can be used for treating hazardous debris. It was stated clearly in the preamble to the August 18, 1992 rule that debris must be treated by either using one of the specified technologies in § 268.45, or, as an alternative, by meeting LDRs for the specific prohibited listed or characteristic waste with which the debris is contaminated (57 FR 37221). Subsequent comment from the regulated community indicate that this fact was not made completely clear in the regulatory language of that rule. Certain commenters suggested that a revision of the paperwork requirements found in § 268.7 indicating that generators have a choice as to which treatment standards they may use would help alleviate the confusion.

EPA is, therefore, revising § 268.7(a)(1)(iv) and § 268.7(a)(3)(v) to reflect that it is not mandatory to meet the alternative debris standards in § 268.45, and that generators have the option to meet the treatment standards for the as-generated wastes contaminating the debris. It should be noted that the paperwork requirements for meeting treatment standards for as-generated wastes contaminating debris are the same as those for as-generated wastes. A new paragraph is being added to the regulatory language to indicate this.

In addition, consistent with EPA's effort to simplify LDR paperwork requirements, EPA is shortening the notification statement accompanying prohibited debris. In § 268.7(a)(1)(iv) and § 268.7(a)(3)(v), as promulgated on August 18, 1992, the statement "This hazardous debris is subject to the alternative treatment standards of 40 CFR 268.45" was required to be placed on the LDR notification, after listing the contaminants subject to treatment. EPA is revising that particular statement today so that merely referencing § 268.45 after listing the contaminants subject to treatment is all that must be included on the LDR notification.

The second issue the Agency wishes to clarify and correct today concerns the language in § 268.45(b)(2) of the August 18, 1992 **Federal Register**. This section states that the contaminants subject to the alternative treatment standards for hazardous debris, which were promulgated in the August 18, 1992 rule, are those constituents for which BDAT standards are established in §§ 268.41 and 268.43. The Agency has received several letters asking why section 268.42 was not included in that language. Section 268.42 lists those wastes for which EPA established a treatment method as the standard. The reason section 268.42 was not included in the language in § 268.45(b)(2) is that only the wastes themselves, and not waste constituents, are listed in § 268.42.

The Agency fully intends, however, that debris contaminated with those wastes be subject to the alternate debris standards. Therefore, § 268.45(b)(2) is being clarified today to read "The contaminants subject to treatment for debris that is contaminated with a prohibited listed hazardous waste are those constituents or wastes for which BDAT standards are established for the wastes under §§ 268.41, 268.42, and 268.43."

The third issue the Agency is clarifying concerns exactly when surface impoundments which are newly subject to RCRA section 3005(j)(1) are expected to be in compliance with the requirements of § 265.221 (a), (c), and (d). As is stated in § 268.5(h)(2)(v) (as promulgated at 57 FR 37270, August 18, 1992), such surface impoundments must be in compliance within 48 months after the promulgation of additional listings or characteristics for the identification of hazardous waste. This is the maximum time allowed by RCRA section 3005(j)(6).

EPA mistakenly stated in two separate places in the preamble to the August 18, 1992 rule that the compliance date was 48 months from the effective date of a waste identification or listing (57 FR 37220). The Agency wants to make it clear that the compliance date which was promulgated in the regulations, and which is mandated by RCRA 3005(j)(6), is correct (57 FR 37270). These surface impoundments are thus required to be in compliance 48 months from the promulgation date of a new identification or listing. § 268.5(h)(2)(v).

The promulgation date is the date the Administrator signs the rule which lists the new waste(s). The effective date is the date the new waste must come into compliance with hazardous waste management requirements, and may be six months from the promulgation date. The Agency believes that 48 months to retrofit a surface impoundment is a reasonable amount of time, and believes that effort should begin as soon as the listing of a waste is published in the **Federal Register**; there is no reason to wait to begin retrofitting until a new listing or identification actually becomes effective. In any case, section 3005(j)(6) allows no other option.

Finally, in § 268.38(a) of this rule, EPA is prohibiting debris that is contaminated with the wastes that were prohibited in the Phase I rule. EPA inadvertently omitted to include such contaminated debris in the August 18, 1992 rule.

C. Amendment of Boiler and Industrial Furnace Rules for Certain Mercury-Containing Wastes

1. The Proposal

The Agency proposed a technical clarification to the Boiler and Industrial Furnace (BIF) rules on July 21, 1994 (59 FR 31964), that would exempt certain mercury-bearing hazardous wastes generated by the Chlorine Industry from the provisions of 266.100(c). Under this provision, owners and operators of smelting, melting, and refining furnaces that process hazardous wastes solely for metal recovery are conditionally exempt from regulation. To be exempt, the owner or operator must comply with certain notification, sampling and analysis, and recordkeeping provisions (see 266.100(c)(1)(i)). In addition, as indicated above, the waste must be processed solely for metal recovery; to be processed solely for metal recovery, the waste can not have a heating value greater than 5000 BTU/lb or have a total concentration of organic compounds listed in Appendix VIII of Part 261 greater than 500 ppm by weight. Wastes that have a heating value greater than 5000 BTU/lb or have a total concentration of hazardous organic compounds exceeding 500 ppm are considered by EPA to be burned for energy recovery and destruction, respectively and, thus, are subject to the BIF rules.

The Agency generally believes that most wastes that meet these criteria are appropriately subject to the BIF regulations. However, in certain instances, wastes that are burned for legitimate metal recovery can also exceed the 5000 BTU/lb and 500 ppm organic compound limits, in which case standards other than those in the BIF rules are likely more appropriate. (See 59 FR at 29776 (June 9, 1994) proposing CAA MACT standards for secondary lead smelters and indicating why RCRA air emission standards are not needed.) In fact, the Agency has specified a set of lead and nickel-bearing hazardous wastes that exceed the energy recovery or destruction limits, but are still conditionally exempt from the BIF rules if these wastes are legitimately burned for metal recovery (see 266.100(c)(3) and Appendices XI and XII to Part 266).

In the proposed technical clarification, the Agency defined some additional hazardous wastes—specifically, those generated by the Chlorine Industry and which are suitable for mercury recovery—that could be recovered in mercury retorting units without those units being subject to the BIF rules (provided the owners or operators of these units meet certain conditions). The Agency proposed this change based on the fact that these wastes contain high levels of mercury (from hundreds of parts per million to as much as 45%) and, thus are appropriate for recovery; in addition, the retort units in which these wastes are processed must be subject to emissions controls under the Clean Air Act. See § 268.42 (treatment standards for high mercury subcategory wastes that require retorting units to be subject to the CAA or comparable standards for control of mercury). It should also be noted that the Chlorine Institute, as part of their comments on the Phase II LDR proposal, requested that the Agency exempt these wastes from the BIFs rules. The remainder of this section of the preamble discusses the comments received and our response to those comments.

2. Comments and the Final Rule

The Agency received comments from five parties, Borden Chemical and Plastics (BCP), Bethlehem Apparatus (BA), PPG Industries (PPG), Olin Chemicals (Olin), and the Chlorine Institute (CI). Their collective comments and the Agency's response follows.

The proposal limited the conditional exemption to certain mercury-bearing hazardous wastes generated by the Chlorine Institute. BCP, BA, and CI argued that the proposed change was too narrow, and that other mercury recovery units may also process combustible materials for legitimate metals recovery. Commenters thus recommended that the exemption should apply to all processors of mercury wastes. The Agency generally agrees with this position. Upon reevaluation, EPA believes there is no need to differentiate between units in the Chlorine Industry and similar units outside the Chlorine Industry. Therefore, the Agency is promulgating a rule which includes units operated by manufacturers and users of mercury or mercury products.

BCP addressed a second option for broadening the exemption so that devices other than those operated in the Chlorine Industry could process combustible wastes for legitimate metals recovery. BCP suggested EPA define mercury as a precious metal and allow processors to burn mercury laden hazardous wastes subject to the Agency's BIF precious metals exemption (see § 266.100(f)). EPA does not agree with BCP's contention that mercury is a precious metal. Mercury is not considered a precious metal by EPA or other Agencies or organizations. Precious metals are defined by the Bureau of Mines to include gold, silver, platinum, and palladium (Mineral Commodity Summary, 1993), and by EPA at 40 CFR 266.70 to include gold, silver, platinum, palladium, iridium, osmium, rhodium, and ruthenium, all metals whose value assures adequate control. Therefore, EPA rejects the approach suggested by BCP.

BCP, PPG, Olin, and CI also commented that the list of materials in the proposed technical clarification should be broadened to include the following additional items:

Sweepings
Respiratory Cartridge Filters
Cleanup Articles
Plastic Bags and Other Contaminated Containers
Laboratory and Process Control Samples
Wastewater Treatment Plant Sludge and Filter Cake
Mercury cell process sump and tank sludges
Mercury cell process solids
K106
Recoverable levels of mercury contained in soil

Upon evaluation, the Agency agrees that of these materials are appropriate for an exemption as long as they have recoverable levels of mercury. However, many mercury units, e.g., retorters, are not combustion devices and organic emissions may not be controlled in these units. Therefore, the Agency is concerned that materials with recoverable levels of mercury, but laden with hazardous organics, may not provide adequate destruction of the hazardous organics in exempt retorters, and thus, may not be protective of human health and the environment. For that reason, the Agency is promulgating a broadened list of materials but is limiting the exemption to these wastes specifically identified and that contain less than 500 ppm of part 261, appendix VIII organics.

Finally, there appears to be some confusion by the Chlorine Industry about their status under the BIF rules (collectively, those regulations set forth in 40 CFR Part 266, Subpart H). CI, PPG, and Olin argued that they are not subject to BIF because they do not "burn" or "combust" anything and the BIF rules are written for combustion devices. The Agency agrees that many mercury recovery devices do not "burn" or "combust" by design; however, these units are Industrial Furnaces as defined in § 260.10 and, thus, are subject to the appropriate BIF rules. In particular, § 260.10 defines Industrial Furnaces as "devices * * * that use *thermal treatment* to accomplish recovery of materials" and that these include "refining furnaces". [Emphasis added.] Mercury recovery units raise the temperature of the waste to aid in the recovery and refining of mercury. Therefore, they are refining furnaces. In addition, § 266.100(c) states that "smelting, melting and refining furnaces * * * that *process* hazardous waste solely for metals recovery are conditionally exempt * * *." [Emphasis added.] This language includes all refining furnaces that *process* hazardous waste, irrespective of whether the process to achieve this end is combustion or not. Therefore, mercury recovery devices are BIFs, and come within the terms of § 266.100(c). EPA is using the term "mercury recovery furnace" in today's amended rule to further clarify this point. (It should be noted that compliance with the BIF rules for these devices are not rigorous. It requires sending a one time written notification to the regional Director and following the provisions set forth in § 266.100(c).)

Mercury recovery operators should note that the changes discussed in this section of the preamble only apply to units which have a metals recovery exemption. Units which process these wastes without the proper exemption are in violation of the BIF rules and subject to enforcement action.

D. Amendment of Rules on Use Constituting Disposal

In 1985, EPA created a separate regulatory regime for hazardous wastes that are recycled by being used in a manner constituting disposal. Part 266 subpart C.[1] These rules provide, in essence, that the wastes can be so used without being subject to the RCRA facility standards if the waste-derived product (i.e. the hazardous wastes that is being used by being applied to the land (i.e. used in a manner constituting disposal)) has been "produced for the general public's use," has undergone a chemical change so as to be inseparable by physical means, and if it meets the applicable LDR treatment standard. See § 266.20(b).

Hazardous wastes used in a manner constituting disposal that do not satisfy these conditions are subject to all of the subtitle C standards. See § 266.23(a). In promulgating this provision in 1985, however, the Agency neglected to mention the then newly-enacted land disposal restriction requirements as among the standards to which the wastes were subject. The Agency obviously was not intending to amend the statute, and cannot override an express statutory requirement by regulation. The Agency only recently noticed this omission, and is using this opportunity to correct the error. Consequently, the Part 268 requirements will be added to the list of requirements in § 266.23(a) for those hazardous wastes not satisfying the conditions of § 266.20(b). This amendment is effective 90 days after publication of today's rule.

XIV. Capacity Determinations

This section presents the data sources, methodology, and results of EPA's capacity analysis for today's rule. Section A summarizes the results of the capacity analysis for the wastes covered by this rule; Section B summarizes the analysis of available capacity; Section C summarizes the capacity analysis for those newly identified and listed wastes that are land disposed in units other than deep injection wells; Section D summarizes the capacity analysis for wastes mixed with radioactive contaminants; Section E summarizes the results of the capacity analysis for high TOC ignitable and TC pesticide wastes and newly listed and identified wastes injected into Class I deep wells; and Section F presents the results of the capacity analysis for hazardous soil and debris contaminated with the newly listed and identified wastes covered in this rule.

In general, EPA's capacity analysis methodologies focus on the amount of waste currently land disposed that will require alternative commercial treatment as a result of the LDRs. Land-disposed wastes that do not require alternative commercial treatment (e.g., those that are currently treated using an appropriate treatment technology or that will be treated using an alternative on-site treatment system) are excluded from the quantity estimates. In addition, wastes managed in CWA, SDWA, CWA-equivalent systems are not included in this rule and will be addressed in an upcoming rulemaking.

EPA's decisions on whether to grant a national capacity variance are based on the demand for commercial treatment or recovery technologies. Consequently, the methodology focuses on deriving estimates of the quantity of wastes that will require commercial treatment as a result of the LDRs; quantities of waste that will be treated on-site or by facilities owned by the same company as the generator are omitted from the required commercial capacity estimates.

The major capacity information collection initiative for this rule was an EPA survey of all land disposal facilities that manage newly identified TC organic wastes (including TC-contaminated soil and debris) in land-based units (TC Survey). The survey, conducted in the spring of 1992, is a census of approximately 140 facilities. EPA identified the universe primarily based on those facilities that had submitted permit modifications or received interim status for managing these wastes. For each facility, EPA requested waste-stream specific data on newly identified TC organic wastes and information on on-site land disposal units and treatment and recovery systems.

EPA developed a data set of the information on the TC Survey results. Specifically, the data set contains information on the quantities of newly-identified organic TC wastes that will require commercial treatment capacity as a result of the LDRs. The data collected and the survey used for the required capacity estimates are part of the docket for today's final rule.

A. Capacity Analysis Results Summary

For the organic TC wastes (D018–D043), EPA estimates that 220,000 tons of newly identified organic TC sludges and solids will require alternative commercial treatment as a result of today's final rule.

EPA estimates that much smaller quantities of the other listed wastes included in today's rule will require alternative commercial treatment. Fewer than 100 tons of chlorinated toluene (K149–K151) nonwastewaters are currently being land disposed and will require alternative treatment due to the LDRs. Approximately 4,600 tons of coke by-product (K141–K145, K147 and K148) nonwastewaters are currently being land disposed. However, comments to EPA indicate that the majority of the nonwastewaters are recycled or used for energy recovery and, therefore, alternative treatment may not be required. No K141–K145, K147 and K148 wastewaters are currently being land disposed. No K149–K151 wastewaters are currently being land disposed.

The quantities of radioactive wastes mixed with wastes included in today's final rule and currently being land disposed are generated primarily by the U.S. Department of Energy (DOE). EPA estimates that 1,300 m^3 of high-level waste, 380 m^3 of mixed transuranic waste, and 1,100 m^3 of mixed low-level waste containing wastes covered in today's rule will be generated annually by DOE. These estimates exclude mixed wastes currently in storage, environmental restoration wastes, and soil and debris. DOE currently faces treatment capacity shortfalls for some high-level wastes and for all projected mixed transuranic waste generation. In addition, although the annual DOE treatment capacity for mixed low-level wastes exceeds the estimated annual generation, most of this capacity is limited to treatment of wastewaters with less than one percent total suspended solids, and is not readily adaptable for other waste forms. Consequently, DOE also faces a treatment capacity shortfall for mixed low-level nonwastewaters. Furthermore, DOE has indicated that it will generally give treatment priority to mixed wastes that are already restricted under previous LDR rules.

With respect to certain wastes being injected into deep wells, EPA has very limited information that differentiates high TOC D001 ignitable wastes from low TOC D001 ignitable wastes, particularly with reference to the type of Class I injection well (i.e., nonhazardous versus hazardous) the wastes are ultimately disposed into. The information the Agency does have indicates that both D001 ignitable wastes and D012–D017 TC pesticide wastes are deep well injected into Class I hazardous wells with no-migration exemptions. However, several

[1] These rules apply, of course, only if the recycling is legitimate, and not a form of surrogate disposal. § 266.20(a) applies only to "recyclable materials", which are hazardous wastes being recycled. § 261.6(a)(1). This does not include wastes that are abandoned by being disposed of. § 261.2(b)(1).

commenters to the proposed rule, and other industries with Class I injection wells, indicated that it would be extremely difficult to identify, segregate, treat, and/or arrange for disposal of these waste streams in a short time frame. Consequently, EPA is granting these wastes a one-year national capacity variance.

The Agency also estimates that up to 120,000 tons of hazardous soil and 34,000 tons of hazardous debris contaminated with the newly identified organic TC wastes are expected to require alternative commercial treatment.

Table 1 lists each waste code for which EPA is promulgating LDR standards today. For each code, this table indicates whether EPA is granting a national capacity variance for land-disposed wastes. As indicated, EPA is not granting a two-year national capacity variance for the newly identified organic TC wastes, including soil and debris, nor for the listed wastes covered under this rule. Rather, EPA is granting a three-month variance. (This extension does not apply to wastes with a specified longer national capacity variance.) EPA is delaying the effective date because the Agency realizes that even where data indicate that sufficient treatment capacity exists, such capacity may not be immediately available. Additional time may be required to determine what compliance entails, redesign tracking documents, possibly adjust facility operations, and possibly segregate waste streams. EPA believes these legitimate delays can be encompassed within a short-term capacity variance because the ability to get wastes to the treatment capacity in a lawful manner is an inherent part of assessing available capacity. However, the Agency is granting a two-year national capacity variance for mixed radioactive wastes (i.e., radioactive wastes mixed with newly identified TC organic constituents D018–D043), including soil and debris contaminated with mixed radioactive wastes.

EPA also is granting a one-year national capacity variance to allow the Class I injection facilities an appropriate lead time to identify and then manage their high TOC D001 and D012–D017 waste streams by developing practical and sound treatment and/or disposal options and ultimately to come into compliance with today's rule.

TABLE 1.—CAPACITY VARIANCES FOR NEWLY LISTED AND IDENTIFIED WASTES [1]

Waste type	Variance for surface-disposed wastes	Variance for deep well-disposed wastes
High TOC D001 Wastes.	No	One year
D012–D017 Wastes [2].	No	One year
D018–D043 Nonwastewaters.	No	N/A
K141–K145 Wastes.	No	No
K147–K148 Wastes.	No	No
K149–K151 Wastes.	No	No
Soil (Phase II Wastes).	No	N/A
Debris (Phase II Wastes).	No	N/A
Mixed Radioactive	Two years	N/A
Mixed Radioactive Soil and Debris (with Phase II Wastes).	Two years	N/A

N/A=Not applicable.

[1] EPA is granting a three month national capacity variance for all the newly identified and listed wastes covered in this rule to handle logistical problems associated with complying with the new standards.

[2] Newly identified TC wastes that were not previously hazardous by the old EP Leaching Procedure.

B. Analysis of Available Capacity

The analysis of commercial capacity for newly identified and listed wastes is based primarily on data received in voluntary data submissions. These data include estimates of available capacity at commercial combustion facilities provided by the Hazardous Waste Treatment Council (HWTC) on incinerators and the Cement Kiln Recycling Coalition (CKRC) on cement kilns that burn hazardous wastes. Capacity for other conventional treatment processes (e.g., stabilization) is based on the 1990 TSDR Survey Capacity Data Set, which contains results from the National Survey of Hazardous Waste Treatment, Storage, Disposal and Recycling Survey (the TSDR Survey), and required capacity information from prior LDR rules.

Combustion Capacity. Combustion capacity for liquid hazardous wastes has historically been more readily available than capacity for sludges and solids. EPA estimates commercial combustion capacity for TC organic liquids to be about 1,267,000 tons per year. Commercial capacity for combustion of sludges and solids is available at both incinerators and industrial furnaces (primarily cement kilns that are authorized to burn hazardous wastes as fuel).

Cement kiln capacity for hazardous waste is limited by air emission limits (e.g., boiler and industrial furnace (BIF) limits under 40 CFR 266 subpart H), feed system limitations (e.g., particle size and viscosity limits), and product (i.e., cement clinker) quality considerations. For instance, cement quality considerations may require that wastes burned in cement kilns have a heating value of at least 5,000 BTU/lb to ensure adequate temperatures in the kiln. (Comments received by EPA, however, indicate that some kilns accept wastes below this heating value.) Incineration capacity is also limited by air emission limits, other permit limits (such as heat release limits), and feed system limits. EPA has taken these limitations into account in its estimates of available commercial combustion capacity.

Information available to EPA indicates that approximately 438,000 tons/year of commercial combustion capacity are available for newly identified TC organic sludges and solids, including soil and debris.[2] EPA primarily derived this estimate primarily from survey data compiled by the Hazardous Waste Treatment Council (HWTC) and Cement Kiln Recycling Coalition (CKRC). These surveys contained detailed information on the amount and types of waste burned at each commercial facility in 1992, and the maximum amount of waste that could practically be burned in light of technical, operational, and regulatory constraints. In deriving this estimate, EPA first reviewed each survey response to confirm that the information provided was based on technically valid assumptions. To be conservative in its national estimate, EPA only included facilities and units that are presently capable of operating at or near full capacity under current permit and operational constraints. EPA then derived a national baseline estimate of available capacity by subtracting the amount of waste (hazardous and nonhazardous) burned in 1992 from the maximum practical capacity at each facility. Several cement kilns that burn hazardous waste were not included in the CKRC survey results. For these facilities, EPA obtained maximum practical capacity estimates from other sources (e.g., past data submittals or

[2] This estimate includes solids and nonpumpable sludges, but excludes pumpable sludges. Pumpable sludge capacity in general is grouped with liquid capacity because of its limitations in particle size, solids content, and viscosity, and because pumpable sludges are often fed through the same feed ports that are used for liquids.

general trade literature), and derived available capacity estimates by assuming that these kilns are utilized at the average rate of those included in the CKRC survey. EPA's methodology for deriving its baseline capacity estimate is described in greater detail in the capacity background document for today's rule.

Once EPA obtained its baseline available commercial combustion capacity estimate, it estimated available capacity for wastes affected by today's rule by subtracting required capacity for routinely generated F037 and F038 (69,000 tons/year) from its baseline estimate. This adjustment was needed because these wastes were not regulated during most of the 1992 base year (refer to 57 FR 37194, August 18, 1992). EPA did not adjust its capacity estimate to account for one-time generation of F037 and F038 because the Agency understands that these wastes were generally removed prior to the June 1994 effective date of the LDR standards or are being left in place when the surface impoundments that contain them are being closed.

EPA's estimate of available capacity takes into account capacity that will be required for Phase I wastes that were granted a national capacity variance, ignitable and corrosive wastes whose treatment standards were vacated (58 FR 29860, May 24, 1993), waste characteristics that affect the ability for a particular facility(s) to treat the wastes, and other factors that may limit capacity.

EPA is also considering the capacity effects of recent court decisions regarding the regulation of hazardous constituents other than those for which the waste fails the TC test. EPA solicited comments on the treatment capacity effects of requiring facilities to treat the underlying hazardous constituents in TC organic hazardous wastes to meet the then-proposed universal treatment standards. Although several commenters submitted comments in support of or in opposition to requirements for treatment of underlying hazardous constituents, few comments were received on the specific issue of the effects of this requirement on treatment capacity. EPA has concluded that sufficient combustion capacity exists to treat underlying hazardous organic constituents. One commenter indicated that few facilities could achieve the universal treatment standards (UTS) for some metals (which may be present as underlying constituents) in incinerator ash without further treatment. However, EPA believes that stabilization should generally be able to achieve the UTS levels for metal underlying constituents present in residuals from the treatment of organic TC wastes.

Stabilization Capacity. Stabilization may be required to treat the residuals of wastes covered in today's rule that contain metal underlying constituents. EPA estimates that over 1 million tons of stabilization capacity is currently available. In analyzing alternative treatment capacity for stabilization of newly identified and listed wastes, the Agency built on the capacity analysis conducted for the Third Third LDR rule. This analysis was based on data contained in the TSDR Capacity Data Set.

Innovative (Non-combustion) Technologies. There are several non-combustion technologies for the treatment of soil contaminated with RCRA hazardous wastes, including hydrolysis, vacuum extraction, photolysis, and oxidation. To the extent that these technologies can be used to treat hazardous soil on-site, the required capacity for combustion will decrease.

EPA has limited information on innovative technologies with regard to both available capacity and to limitations of the technologies or constraints on the use of these technologies. EPA solicited comments on the use of innovative technologies for the treatment of soil contaminated with RCRA hazardous wastes. Specifically, EPA requested information regarding constraints on the use of these technologies both on- and off-site, including physical or chemical characteristics of the soils, and logistical constraints such as permitting and scheduling. EPA also solicited data on volumes of contaminated soil currently being treated by these technologies, current available capacity, and estimates of future capacity. EPA received two comments regarding innovative technologies. One commenter noted that to treat soil on-site requires permitting and approval by local, state, and federal agencies, which may be a problem for some innovative technologies. Another commenter stated that the chemical concentration to which a soil can be biotreated is influenced by the particular chemical, the soil type, the age of the contaminated media, and the bioremediation process. EPA encourages the use of innovative technologies when feasible, and realizes that—in some cases—use of these technologies may be limited by technical and non-technical considerations. Sufficient conventional treatment capacity is available, however, such that these limitations do not affect capacity determinations.

C. Surface Disposed Newly Identified and Listed Wastes

1. Required Capacity for Newly Identified TC Organics (D018–D043)

The Agency is promulgating treatment standards for TC organic nonwastewaters based primarily on incineration performance data. Treatment standards for some newly identified organic TC wastewaters are also being promulgated in today's rule. (Organic TC wastewaters managed in systems regulated under the CWA, those injected into Class I injection wells as regulated under the SDWA, and those zero discharge facilities that engage in CWA-equivalent treatment prior to land disposal will be addressed in future rulemakings. EPA will make variance determinations for these wastes at that time.) For the proposed rule, the Agency did not have data indicating that facilities managing organic TC wastewaters would be impacted. Thus, EPA solicited comments in the proposed rule on the quantities of newly identified organic TC wastewaters affected by the rule. However, no comments were received on this issue. The Agency has concluded that facilities managing organic TC wastewaters will not be affected by this rule (i.e., no organic TC wastewaters will likely require alternative commercial treatment as a result of today's rule).

EPA developed estimates of the quantities of newly identified TC organic wastes based on current management options to comply with the LDR requirements. EPA did not receive any data in public comments on the quantities of organic TC nonwastewaters containing underlying metal constituents. EPA estimates that approximately 220,000 tons of organic TC nonwastewaters are subject to this rule. (See Table 2 which presents the quantities of TC nonwastewaters (except for liquid nonwastewaters) requiring off-site treatment by waste code.) Even if all this quantity contained underlying metal constituents, the residuals from the treatment of organics could not be higher than 220,000 tons. Underlying metal constituents are, by definition, at levels that are below TC levels for metals. Stabilization is an appropriate technology for treating low level metal wastes. Given that ample treatment capacity exists for stabilization (over 1 million tons), EPA believes that sufficient treatment capacity exists for residuals of organic TC wastes containing underlying metal constituents.

TABLE 2.—QUANTITIES OF TC NONWASTEWATERS REQUIRING OFF-SITE COMMERCIAL TREATMENT

[Surface disposed wastes in tons]

Code	Nonwastewaters
D018	126,000
D019	8,700
D020	6,300
D021	8,500
D022	8,400
D023	3,900
D024	520
D025	310
D026	1,500
D027	1,200
D028	10,800
D029	3,800
D030	510
D031	200
D032	3,300
D033	450
D034	410
D035	4,200
D036	260
D037	600
D038	3,600
D039	6,900
D040	6,600
D041	110
D042	120
D043	16,500
TOTAL [1]	220,000

[1] Total may not sum due to rounding.

The Agency also developed estimates of available commercial treatment capacity. Table 3 summarizes available capacity for each alternative treatment technology required for the newly identified TC nonwastewaters. The table also summarizes the required capacity for each technology. A comparison of required and available treatment capacity indicates that adequate combustion capacity exists for TC nonwastewaters. Therefore, in the proposed rule, EPA indicated they would not be granting a national capacity variance for D018–D043 nonwastewaters. EPA requested comments and any additional data on its assessment that there is adequate treatment capacity for these wastes. EPA received one comment on this issue. The commenter supported EPA's determination that sufficient capacity exists to treat D018–D043 nonwastewaters. Thus, EPA has not changed its assessment and is not granting a variance for these nonwastewaters.

TABLE 3.—REQUIRED AND AVAILABLE CAPACITY FOR NEWLY IDENTIFIED ORGANIC TC WASTES [1]

[All quantities are in tons]

Treatment technology	Available capacity	Required capacity
Liquid Combustion	1,267,000	[2] 11,000
Sludge/Solid Combustion	438,000	220,000
Stabilization	[3] 1,127,000	[4]

[1] Does not include hazardous soil and debris, mixed radioactive wastes, or deep well injected wastes.

[2] These are liquid nonwastewaters.

[3] Capacity analysis for the Phase I Newly Listed and Newly Identified Waste rule.

[4] Stabilization capacity may be required to treat underlying metal constituents in organic TC wastes after combustion.

2. Used Oil

EPA's capacity assessment does not include specific quantities of used oil which might be subject to this rule. Absent data to the contrary, EPA believes that the quantities of used oil that are land disposed and hazardous for TC organics are relatively small. (Used oil that is recycled and that exhibits the TC is not subject to the land disposal restrictions. See 261.6(a)(4).)

EPA has requested information and conducted various studies of generation, management and characteristics of used oil. Although the data are not comprehensive, based on all indications, most used oil is either recycled or reused as fuel.

In its May 20, 1992 (57 FR 21524) final listing determination for used oil, the Agency concluded that only a small portion of used oil is land disposed (less than 10 percent of the amount generated). Although in general used oil could be hazardous for TC organics (benzene) and metals (lead), the Agency furthermore observed that the trend of increased recycling and the phase down of lead in gasoline under the Clean Air Act would decrease both the quantity of used oil that is land disposed and the proportion of it that is hazardous.

To update and refine its capacity analysis for this rule, EPA requested comments in the September 14, 1993 proposed rule (58 FR 48092) and reviewed available data sources. The Agency requested comments on the quantities of used oil that exhibit the toxicity characteristic and is subject to the LDRs. EPA received only one comment from a firm that collected over 113 million gallons of used oil for re-refining in 1992, but did not receive any comments on the amounts of used oil subject to the LDRs.

To gain a broader perspective of used oil generation and management EPA examined 1991 data from the national Biennial Reporting System (BRS). EPA did not expect to obtain comprehensive total quantities of hazardous used oil generation and management; however, EPA was able to get the proportional management of reported waste oils. The BRS shows that less than one percent of all waste oil reported is landfilled. For example, in the 'waste oil from changes' category of the 1991 BRS, approximately 1,400 tons was reported as landfilled. Although EPA believes the proportionate disposal (percent) is nationally representative, the total quantity was reported for waste streams from only a few states which indicates that the total is not comprehensive.

We have received preliminary data from the State of New Jersey Hazardous Waste Facilities Siting Commission. New Jersey treats used oil as state hazardous waste and the Commission tracks generation and shipping/manifest data. In the oil category, approximately 1 percent of used oil generated is identified as land disposed (landfilled). Of this 1 percent we do not know how much would be hazardous for TC organics.

Therefore, EPA believes that the quantities of used oil that are land disposed and are also hazardous for TC organics are small and sufficient reuse-as-fuel, energy recovery, and/or incineration capacity exists. EPA believes that a capacity variance is not warranted for these wastes.

3. Required Capacity for Other Newly Listed Organic Wastes

This section presents EPA's analysis of required capacity for other listed organic wastes including coke by-product wastes and chlorinated toluene production wastes.

a. Surface Disposed Coke By-Product Wastes

K141—Process residues from the recovery of coal tar, including, but not limited to, tar collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludge from coking operations).

K142—Tar storage tank residues from the production of coke from coal or the recovery of coke by-products produced from coal.

K143—Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil units from the recovery of coke by-products produced from coal.

K144—Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump

sludges from the recovery of coke by-products produced from coal.
K145—Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal.
K147—Tar storage tank residues from coal tar refining.
K148—Residues from coal tar distillation, including but not limited to still bottoms.

For coke by-product nonwastewaters, EPA is promulgating concentration-based standards based on incineration. Under the authority of section 3007 of RCRA, EPA collected generation and management information concerning coke by-product wastes; this information was collected in 1985 and 1987. The majority of K141 to K145 nonwastewaters generated during that timeframe were recycled or used for energy recovery. Tar storage tank and tar distillation bottoms may be removed periodically. The Agency identified the following annualized land-disposed quantities of wastes: 49 tons of K141 nonwastewaters, 2,750 tons of K142 nonwastewaters, 10 tons of K143 nonwastewaters, 304 tons of K144 nonwastewaters, 1,408 tons of K147 nonwastewaters, and less than 100 tons of K148 nonwastewaters. EPA identified no K145 nonwastewaters that were being land disposed. The Agency solicited comments on the above estimated quantities that may require alternative treatment as a result of the LDRs. However, no comments were received on this issue. Thus, EPA is using the estimates shown above for the quantities of these wastes that may require treatment capacity as a result of the LDRs.

Current management practices indicate that the majority of the newly listed coke by-product wastes are amenable to recycling, and therefore alternative treatment may not be required as a result of today's final rule. Thus, EPA believes that adequate capacity exists to treat the small amount of wastes that require alternative treatment.

EPA does not have any information that coke by-product wastewaters are currently generated. The quantity of these wastewaters is assumed to be zero. EPA solicited comments on changes of management practices or generation data on these wastes. No comments were received on this issue. Consequently, EPA concludes that the quantity of these wastewaters is zero.

As a result of this analysis, EPA is not granting a national capacity variance to K141, K142, K143, K144, K145, K147, and K148 nonwastewaters and wastewaters; however, the Agency is granting a three-month variance as described in Section A for the reason described therein.

b. Surface Disposed Chlorinated Toluene Wastes

K149—Distillation bottoms from the production of alpha (methyl) chlorinated toluene, ring-chlorinated toluene, benzoyl chlorides, and compound with mixtures of these functional groups. (This waste does not include still bottoms from the distillation of benzyl chloride.)
K150—Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha (methyl) chlorinated toluene, ring-chlorinated toluene, benzoyl chlorides and compounds with mixtures of these functional groups.
K151—Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha (methyl) chlorinated toluene, ring-chlorinated toluene, benzoyl chlorides and compounds with mixtures of these functional groups.

For wastes generated during the production of chlorinated toluene, EPA is promulgating concentration-based treatment standards based on incineration for nonwastewaters. EPA collected generation and management information on wastes generated from the production of chlorinated toluene. EPA collected this information under the authority of section 3007 of RCRA during engineering site visits in 1988. This capacity analysis incorporates data from the section 3007 information request and engineering site visits. EPA identified four facilities that produce chlorinated toluene wastes.

The Agency has identified no K149 nonwastewaters, no K150 nonwastewaters, and less than 100 tons of K151 nonwastewaters that were being land disposed. For the capacity analysis, EPA assumes that these quantities are currently being land disposed and will require treatment capacity as a result of today's final rule.

EPA solicited comments on management practices and generation data on these wastes. One commenter requested a variance because high concentrations of salt and halogenated compounds make these wastes difficult to incinerate. EPA contacted a commercial incineration facility that stated that with proper management they could treat these wastes. Therefore, EPA believes that a capacity variance is not warranted for these wastes.

EPA does not have any information that chlorinated toluene wastewaters are currently generated. EPA solicited comments on changes of management practices or generation data on these wastes. No comments were received on this issue. Thus, EPA concludes that the quantity of these wastewaters is zero.

Because adequate capacity exists to treat these wastes, EPA is not granting a national capacity variance for K149, K150, and K151 nonwastewaters and wastewaters; however, like the other newly listed and identified wastes, EPA is granting a three-month variance as described in Section A for the reason described therein.

4. Newly Identified TC Wastes That Were Not Previously Hazardous by the Old EP Leaching Procedure

In the Third Third LDR rule (55 FR 22520, June 1, 1990), EPA promulgated treatment standards for D012 through D017 wastes, but only for those wastes that were previously hazardous by the old EP leaching procedure and remain hazardous under the new TCLP. D012 through D017 wastes that were not hazardous by the old EP leaching procedure but are now hazardous using the new TCLP are considered newly-identified D012 through D017 wastes.

In response to the ANPRM (56 FR 55160, October 24, 1991), EPA did not receive any estimates for additional waste quantities (or newly-identified wastes) due to the use of the TCLP rather than the EP leaching procedure. Similarly, no estimates were received in response to the proposed rule. EPA believes that the quantities of the newly-identified D012 through D017 wastes due to the use of the TCLP rather than the EP leaching procedure are small, if any, and, hence, expects little or no additional demand for commercial treatment capacity as a result of the LDRs. Because sufficient capacity exists to treat these wastes, EPA is not granting the newly-identified D012 through D017 wastes a national capacity variance. However, the Agency is granting a three-month variance as described in Section A of the preamble.

D. Required and Available Capacity for Newly Listed and Identified Wastes Mixed with Radioactive Components

EPA has defined a mixed RCRA/radioactive waste as any matrix containing a RCRA hazardous waste and a radioactive waste subject to the Atomic Energy Act (53 FR 37045–37046, September 23, 1988). These mixed wastes are subject to RCRA hazardous waste regulations, including the LDRs, regardless of the type of radioactive constituents contained in these wastes.

Radioactive wastes that are mixed with spent solvents, dioxins, California list wastes, First Third, Second Third, or Third Third wastes, and Phase I wastes, are subject to the LDRs already promulgated for these hazardous wastes.

EPA granted national capacity variances for all of these mixed wastes because of a lack of national treatment capacity. Today's rule addresses the radioactive wastes that contain newly listed and identified hazardous wastes being restricted in today's rulemaking.

Based on comments received by EPA in response to the proposed rule, the ANPRM (56 FR 55160, October 24, 1991), and previous rulemakings, the U.S. Department of Energy (DOE) is the primary generator of mixed RCRA/radioactive wastes. A variety of non-DOE facilities also generate mixed wastes, including nuclear power plants, academic and medical institutions, and industrial facilities.

1. Waste Generation

a. Non-soil and Non-debris Mixed Radioactive Wastes

In April 1993, DOE released the Interim Mixed Waste Inventory Report (IMWIR), which included a national inventory of all mixed wastes that were being stored or would be generated over the next five years and a national inventory of mixed waste treatment capacities and technologies. The report provides waste stream-specific and treatment facility-specific information for each site managing DOE wastes. This report is currently being updated; however the Final Mixed Waste Inventory Report (MWIR) Data Base that will be used to develop the Final MWIR was made public in May, 1994. This Data Base was used to determine the quantity of DOE-generated mixed waste requiring treatment.

Based on the MWIR data, EPA estimates that DOE generates 1,700 m^3/yr of non-soil, non-debris mixed radioactive waste contaminated with TC organic constituents. In addition, DOE currently has 19,000 m^3 of these wastes in storage. Table 4 lists the quantities of each category of non-soil, non-debris mixed waste that DOE expects to generate annually, as well as the amount currently in storage.

TABLE 4.—QUANTITIES OF DOE NON-SOIL, NON-DEBRIS NEWLY IDENTIFIED TC ORGANIC MIXED RADIOACTIVE WASTES

Mixed waste category	Current inventory (m^3)	Annual generation (m^3/yr)
High-level waste (HLW)	11,000	1,300
Mixed transuranic waste (MTRU)	4,700	1
Mixed low-level waste (MLLW)	3,400	400

b. Mixed Radioactive Soil

EPA derived data on the quantities of DOE mixed radioactive soils using MWIR data. Table 5 lists the quantities of each category of mixed radioactive soil that is expected to be generated annually, as well as the amount currently in storage. The quantity of hazardous soil in storage, or projected to be generated annually, is very small. This can be attributed to the fact that the MWIR Data Base generally does not include DOE environmental restoration wastes. When these wastes are generated they will increase the quantity of newly identified mixed wastes, particularly soil, that require treatment. Although these wastes are not included in the Final MWIR Data Base, the IMWIR estimates that DOE will generate a total of approximately 600,000 m^3 of mixed environmental restoration wastes over the period from 1993 to 1997. Some of these wastes will likely be newly identified organic TC mixed wastes.

TABLE 5.—QUANTITIES OF DOE NEWLY IDENTIFIED TC ORGANIC MIXED RADIOACTIVE SOILS

Mixed waste category	Current inventory (m^3)	Annual generation (m^3/yr)
High-level waste (HLW)	0	0
Mixed transuranic waste (MTRU)	0	0
Mixed low-level waste (MLLW)	20	10

c. Mixed Radioactive Debris

EPA derived data on quantities of DOE mixed radioactive debris using MWIR data. Table 6 lists the quantities of each category of mixed radioactive debris that is expected to be generated annually, as well as the quantity currently in storage.

TABLE 6.—QUANTITIES OF DOE NEWLY IDENTIFIED TC ORGANIC MIXED RADIOACTIVE DEBRIS

Mixed waste category	Current inventory (m^3)	Annual generation (m^3/yr)
High-level waste (HLW)	0	0
Mixed transuranic waste (MTRU)	18,000	380
Mixed low-level waste (MLLW)	14,000	650

2. Available Capacity and Capacity Implications

a. Non-soil and Non-debris Mixed Radioactive Wastes

EPA's review of IMWIR data indicates that 4,000 m^3 of treatment capacity are available annually for HLW at three DOE treatment systems. The available capacity appears sufficient to treat the estimated average annual generation. However, the IMWIR indicates that the current national inventory of HLW is greater than 280,000 m^3. This quantity dwarfs DOE's annual available treatment capacity for HLW. Consequently, DOE faces a treatment capacity shortfall for high-level radioactive wastes.

DOE is developing the Waste Isolation Pilot Project (WIPP) in New Mexico as a permanent repository for DOE TRU wastes, including MTRU wastes. However, DOE is not yet authorized to begin the placement of TRU wastes in the WIPP. In addition, wastes received at the WIPP must meet DOE's WIPP Waste Acceptance Criteria (WIPP–WAC). DOE is still in the planning stages for facilities designed to prepare MTRU wastes for shipment to the WIPP. As a result, DOE faces a capacity shortfall for treatment of MTRU wastes.

EPA's review of the IMWIR data indicates that 340 m^3/yr of currently available capacity exists at four DOE treatment systems for the treatment of alpha MLLW (i.e., MLLW with an alpha particle content between 10 and 100 nCi/g). However, the available capacity is greatly exceeded by the estimated quantity of alpha MLLW requiring treatment annually over the next five years, 3,700 m^3. Consequently, DOE faces a treatment capacity shortfall for non-soil, non-debris alpha MLLW.

According to IMWIR, 1,000,000 m^3/yr of treatment capacity among 26 systems are currently available to treat non-alpha MLLW. However, IMWIR states that most of DOE's currently available treatment capacity for MLLW is represented by facilities limited to the treatment of wastewaters (defined by DOE as less than 1 percent total suspended solids (TSS)). While these treatment facilities provide excess capacity for MLLW wastewaters, they cannot process wastes with high TSS and are not readily adaptable for other waste forms. Thus, although the quantity of MLLW treatment capacity is greater than the total quantity of mixed wastes, DOE faces a treatment capacity shortfall for nonwastewater MLLW, and thus non-alpha MLLW.

While DOE has provided its best available data on mixed waste generation, uncertainty remains about

mixed waste generation at DOE (and non-DOE) facilities. For example, not all DOE Field Organizations responded to DOE's request for information following publication of the ANPRM. In addition, the data submitted to EPA generally did not include DOE environmental restoration wastes which, when generated, will increase the quantity of newly identified mixed wastes that require treatment. The IMWIR estimates that DOE will generate a total of 600,000 m^3 of mixed environmental restoration wastes over the period from 1993 to 1997. Although the IMWIR notes that the estimates of DOE environmental restoration wastes are preliminary, the quantities noted above will place additional strains on DOE's limited available mixed waste treatment capacity.

Although DOE is in the process of increasing its capacity to manage mixed RCRA/radioactive wastes, information supplied by DOE indicates that a significant capacity shortfall currently exists for the treatment of mixed RCRA/radioactive wastes, much of which are in storage facilities awaiting treatment. DOE has indicated that it will generally give treatment priority to mixed wastes that are already restricted under previous LDR rules (e.g., radioactive wastes mixed with solvents, dioxins, California list wastes, First Third, Second Third, or Third Third wastes, and Phase I wastes). DOE is also concerned about the availability of treatment capacity for mixed wastes that will be generated as a result of site remediation activities. EPA's review of non-DOE data sources also showed a significant lack of commercial treatment capacity.

In response to the Phase II proposed rule, EPA received six comments concerning the proposal to grant a two-year national capacity variance for non-soil, non-debris TC organic mixed radioactive wastes. All six commenters, including DOE, were in favor of the two-year national capacity variance. Furthermore, none of the commenters identified any additional treatment capacity for the wastes. Thus, despite the uncertainty about the exact quantities of mixed radioactive wastes containing newly listed and identified wastes that will require treatment as a result of today's rule, the quantities appear to exceed available capacity. In addition, any new commercial capacity that does become available will be needed for mixed radioactive wastes that were regulated in previous LDR rulemakings and whose variances have already expired. Therefore, EPA has determined that sufficient alternative treatment capacity is not available for mixed radioactive wastes contaminated with newly listed and identified wastes whose standards are being promulgated today, and thus is granting a two-year national capacity variance for these wastes.

b. Mixed Radioactive Soil

EPA's review of IMWIR data indicates that no available treatment capacity exists at DOE facilities for mixed radioactive soils. As indicated earlier, a preliminary estimate of mixed radioactive soil is approximately 10 m^3/yr. Therefore, EPA is granting a two-year national capacity variance for mixed radioactive soils.

c. Mixed Radioactive Debris

EPA's review of IMWIR data indicates that less than 2 m^3/yr of treatment capacity is available that can accept mixed low-level debris, an amount that exceeds the estimated annual generation. In addition, DOE has not yet been authorized to begin placement of MTRU wastes into the WIPP. As a result, DOE faces a treatment capacity shortfall for mixed transuranic debris. Therefore, EPA is granting a two-year national capacity variance to debris contaminated with mixed radioactive wastes.

E. Required and Available Capacity for High TOC Ignitable, TC Pesticide, and Newly Listed Wastes Injected Into Class I Deep Wells

As explained in previous rules concerning land disposal restrictions (see e.g., 52 FR 32450, August 27, 1987; 53 FR 30912, August 16, 1988; 55 FR 22520, June 1, 1990), EPA is allocating available capacity first to those wastes disposed in surface units, second to wastes resulting from CERCLA and RCRA clean ups, and finally to underground injected wastes. Based on this hierarchical approach, the Agency is promulgating the following effective dates for injected wastes.

EPA still has very limited information which differentiates high TOC D001 ignitable wastes from low TOC D001 ignitable wastes, particularly with reference to the type of Class I injection well (i.e., nonhazardous versus hazardous) into which the wastes are disposed. The information the Agency does have indicates that both D001 ignitable wastes and D012–D017 TC pesticide wastes are deep well injected into Class I hazardous wells with no-migration variances. EPA is concerned that since these wastes are being generated, the potential exists that diluted D001 ignitable wastes and D012–D017 TC pesticide wastes are also being injected into Class I nonhazardous wells. In the proposed rule, EPA estimated that, based on management practices, low volumes of diluted high TOC ignitable waste were injected into Class I nonhazardous wells, and less than 420 tons of D012–D017 pesticide wastes are deep well injected into Class I nonhazardous wells. However, several commenters to the proposed rule, and other industries with Class I injection wells, have indicated that it would be extremely difficult to identify, segregate, treat, and/or arrange for disposal of these waste streams in a short time frame. This may be particularly true if waste volumes for high TOC D001 ignitable wastes are discovered to greatly exceed earlier estimates. The facilities, depending on their Class I injection wells, would have to reconfigure their disposal systems, which may include the construction or rearrangement of wastelines or piping.

To allow sufficient time to address these logistical problems, EPA is granting a one-year national capacity variance to allow the Class I injection facilities an appropriate lead time to identify their decharacterized high TOC D001 and D012–D017 waste streams and to create an infrastructure that allows their alternative management consistent with today's rule and the statute. This may include installation of equipment to segregate wastes. For operators applying for no-migration petitions, the variance will allow time for conducting the modelling or other analysis, for EPA review, and for the operators to make alternative arrangements if the petitions are not granted.

The following wastes are the newly listed wastes for which numerical standards are being promulgated, and which current data indicate are not being underground injected:

Coke By-Product Wastes: K141, K142, K143, K144, K145, K147, K148

Chlorotoluene Production Wastes: K149, K150, K151

The Agency requested further comment on whether any of these wastes are being injected. Comment was also requested on what quantities of wastes are being injected, and on the characteristics of these wastes. However, no comments were received on this issue. EPA is therefore not granting a national capacity variance for coke production wastes (K141–K145, K147, K148) and for chlorotoluene production wastes (K149–K151) injected into Class I deep wells.

F. Required and Available Capacity for Hazardous Soil and Debris Contaminated with Newly Listed and Identified Wastes

This capacity analysis focuses on hazardous soil and debris contaminated with wastes whose treatment standards are promulgated in today's rule.

EPA used several data sources to estimate the total quantity of land-disposed hazardous soil and debris. These sources include: responses to the Advance Notice to the Proposed Rulemaking (ANPRM) for the newly identified wastes (56 FR 55160); the TC Survey; information provided during a series of roundtable meetings held by the Agency in May and June of 1991 with representatives of companies involved in the management and disposal of hazardous debris and soil; the Biennial Reporting System (BRS); Records of Decision (RODs) of Superfund sites; the TSDR Survey; and the National Survey of Hazardous Waste Generators.[3]

1. Waste Generation

a. Hazardous Soil

The hazardous soil covered by this rule includes soil contaminated with D018–D043 organic TC wastes, and soils contaminated with coke by-product wastes and chlorinated toluene wastes. The largest quantity of hazardous soil affected by today's rulemaking is hazardous soil contaminated with D018–D043 organic TC wastes. At the time of the proposal, the Agency estimated that approximately 233,000 tons per year of TC soils would require off-site treatment and the majority of these TC soils was expected to be generated from surface impoundment closures. Based on new data received from owners/operators concerning surface impoundment closure practices, the Agency now estimates that the annual quantities of TC soil that is land disposed and subject to the LDRs ranges from 70,000 to 120,000 tons. Because TC soil generation from surface impoundment closures is somewhat discretionary, decisions by owners/operators of facilities concerning closure methods significantly changed the generation rates previously estimated in the TC Survey.

The Agency contacted facilities expected to generate TC soils from surface impoundment closures in 1993, 1994, and 1995 to confirm generation rates. Nearly all of the owners/operators revised their estimates for TC soil generation downward. Most owners/operators revised their closure practices to minimize or eliminate TC soil generation. Some facilities closed impoundments prior to today's rulemaking and other facilities are closing their impoundments as landfills. In closing as a landfill, a facility closes the impoundment with the waste in place. The facility owners/operators remove all free liquids, stabilize the sludges, cap the impoundment, and establish a ground water monitoring system. Therefore, for these facilities, no LDR treatment capacity would be necessary for TC soils. Of the facilities that predicted TC soil generation in 1994 and 1995, no facility currently expects to ship TC soils generated from a surface impoundment closure off-site for LDR treatment.

However, for at least two facilities, some uncertainty existed concerning the ability of these facilities to ship all of their TC soils off-site prior to today's rulemaking. Nevertheless, even if these facilities generated all their TC soils after today's rulemaking, the impact on LDR treatment capacity would be minimal because these facilities were expected to generate only 5,300 tons of TC soils. Therefore, only 5,300 tons of TC soils generated by surface impoundment closures might require off-site treatment.

The Agency also reviewed the TC data base and public information on specific facilities to assess the TC soil generation rate from routine and sporadic activities that might require off-site disposal. For this analysis, the Agency assumed that routine activities and the quantity of soil generated should be considered constant over time when analyzing the generator population as a whole. However, for sporadic activities (e.g. surface impoundment closures), which by their nature occur infrequently, the year in which they occur is critically important in determining the required capacity for soil when the rule becomes effective.

In the TC Survey, some TC wastes were only characterized as a mixture of soil and debris. For the lower bound estimate (70,000 tons), the Agency assumed a 50–50 ratio of soil and debris in mixtures characterized as soil and debris. Using this assumption, EPA estimates that approximately 70,000 tons of TC soils generated by routine and sporadic activities will require additional treatment annually. In addition, in this lower bound estimate, the Agency assumed that all facilities were able to manage the TC soils generated from surface impoundment closures prior to the effective date of today's rule. Therefore, for the lower bound estimate, no TC soils from surface impoundment closures are expected to require additional treatment capacity. Based on these assumptions, the Agency calculates that the lower bound estimate is 70,000 tons of TC soils per year.

For the upper bound estimate, the Agency assigned the entire quantity of mixtures of soil and debris reported in the TC survey as TC soils. As a result, the TC soil generation rate for routine and sporadic activities increased by about 20,000 tons. The Agency conducted a similar review of facilities that submitted confidential business information (CBI) concerning TC soil generation rates. When assuming a 100 percent of mixtures were TC soils, these facilities were estimated to generate an additional 53,000 tons of TC soils for a total of 143,000 tons.

To verify the accuracy of the upper bound estimate, the Agency contacted individual facilities to determine actual TC soil generation rates. Based on these contacts, the TC data base overestimated TC soil generation from routine and sporadic activities. Many facilities stated that actual generation rates were lower or that the estimate included one time wastes from surface impoundment closures that already occurred. Therefore, when the Agency revised the upper bound estimates, TC soil generation rates for routine and sporadic activities at all facilities (non-CBI and CBI facilities) were approximately 114,000 tons. After adding the 5,300 tons of TC soils generated by surface impoundment closures, the estimated upper bound quantity of TC soil requiring additional treatment is approximately 120,000 tons per year.

Due to reduced generation of TC soils from surface impoundment closures in 1994 and 1995 and overestimations of TC soil generation rates from routine and sporadic activities, the Agency estimates that between 70,000 and 120,000 tons per year of TC soils will require off-site treatment.

At the time of the proposed rulemaking, the Agency was uncertain concerning the quantities of TC soil generated from manufactured gas plants (MGP). Most of the soil generated at these plants is expected to be contaminated with benzene. EPA requested updated information on the generation and management of these wastes and on whether there will be sufficient commercial treatment services to treat these wastes on-site. No comments were received that specified quantities of soil generated or discussed

[3] EPA conducted the surveys during 1987 and 1988 to obtain comprehensive data on the nation's capacity for managing hazardous waste and the volumes of hazardous waste being land disposed as well as data on waste generation, waste characterization, and hazardous waste treatment capacity in units exempt from RCRA permitting.

commercial capacity for contaminated soils. While EPA acknowledges that generation of TC-contaminated soil from MGP will occur, the Agency expects that most of this quantity will be managed on-site and will not require off-site or commercial treatment capacity. Therefore, EPA has concluded that TC-contaminated soil from MGPs will not significantly affect the required treatment capacity for soil.

Similarly, several commenters to the ANPRM indicated that EPA may have underestimated the annual quantities of hazardous soil generated. Some commenters provided site specific data on the quantities of soil generated during remedial actions. The Agency incorporated these data in its analysis of the required capacity for hazardous soil.

In the proposed rule, EPA requested comments on the use of innovative technologies for hazardous soil. Specifically, EPA requested information on constraints to the use of these technologies both on- and off-site, including physical or chemical characteristics of the wastes, and logistical constraints such as permitting and scheduling. One commenter noted that to treat soil on-site requires permitting and approval by local, state, and federal agencies, which may be a problem for some innovative technologies. Another said that the chemical concentration to which a soil can be biotreated is influenced by the particular chemical, the soil type, the age of the contaminated media, and the bioremediation process. EPA has taken these comments into account in estimating the available capacity provided by innovative technologies for the treatment of hazardous soil.

b. Hazardous Debris

This rule covers debris contaminated with the newly listed and identified wastes covered in this rule. As shown in Table 7, data from the TC Survey indicates that approximately 34,000 tons of debris contaminated with D018–D043 wastes may be currently land disposed.

TABLE 7.—QUANTITIES OF TC-CONTAMINATED DEBRIS REQUIRING OFF-SITE TREATMENT

[Surface disposed wastes in tons]

Code	Debris
D018	26,400
D019	220
D020	20
D021	210
D022	80
D023	60
D024	60
D025	60
D026	700
D027	290
D028	280
D029	330
D030	90
D031	10
D032	70
D033	110
D034	40
D035	300
D036	70
D037	130
D038	570
D039	970
D040	890
D041	20
D042	20
D043	1,700
Total[1]	34,000

[1] Total may not sum due to rounding.

2. Current Management Practices

Waste generators and TSDFs report that most of the soils contaminated with D018–D043 newly identified organic TC wastes are currently landfilled without prior treatment. Incineration is the commercial off-site treatment technology reportedly available for these wastes.

Other than incineration for treating organic TC-contaminated soil, EPA has no information on the commercial off-site availability of other treatment technologies (e.g., low temperature thermal desorption, bioremediation, solvent extraction). Although several commenters to the ANPRM mentioned bioremediation as an alternative to incineration for the treatment of TC-contaminated soils, no commenter provided facility specific information on commercially available off-site treatment capacity for this technology. The lack of off-site commercial capacity for technologies other than incineration was confirmed by responses to EPA's request for voluntary information from vendors of innovative technologies provided in the Vendor Information System for Innovative Treatment Technologies (VISITT). At the time of the proposed rule, EPA had received no information that special-handling problems may limit the quantity of hazardous soil that currently can be treated by incineration, and EPA requested information on special-handling concerns with managing these wastes. No comments were received on this issue. Thus, EPA has concluded that the quantity of hazardous soil that can be treated by incineration will not be limited by special-handling problems.

3. Available Capacity and Capacity Implications

a. Hazardous Soil

EPA is requiring that hazardous soil be treated prior to land disposal. EPA has determined that available destruction (e.g., incineration) and immobilization (e.g., stabilization) capacity exists. Some additional capacity also exists from many of the technologies in the extraction family (e.g., soil washing, chemical extraction). However, some of the capacity of extraction technologies currently used to decontaminate soils, such as soil washing, may not have received requisite permits by the effective date of this rule, although EPA is exploring the various opportunities for these technologies to become operational in an expedited manner. (Please contact the appropriate EPA regional office or the state hazardous waste program.) Thus, EPA anticipates that the off-site commercial capacity available to treat hazardous soils at the time this rule becomes effective will be limited to incineration and stabilization.

EPA recognizes that innovative technologies are also available to treat hazardous soil. Performance of these technologies also may be the basis for treatability variances pursuant to § 268.44(h). EPA requested comments on the practicality and current availability of these technologies. EPA received comments that the proposed soil standards cannot be met by bioremediation, but may be met by innovative technologies such as thermal desorption and soil vapor extraction. However, EPA did not receive any comments on the current availability of these technologies. Thus, EPA has concluded that the off-site treatment capacity for hazardous soils will initially be limited to incineration and stabilization.

The Agency also solicited comments on the need for a capacity variance and on estimates of available treatment capacity. One commenter opposed the proposed capacity variance for soils and said that EPA should—at the very least—require treatment of "hot spots." Several commenters supported the two-year national capacity variance. However, EPA has determined that a national capacity variance is unnecessary for hazardous soils.

b. Hazardous Debris

EPA estimates that approximately 34,000 tons of debris contaminated with newly identified organic TC wastes are currently land disposed and require off-site commercial treatment capacity. The capacity analysis conducted for debris contaminated with Phase II wastes indicates that sufficient capacity exists to treat debris contaminated with organics. Therefore, EPA is not granting a national capacity variance for hazardous debris contaminated with organic TC wastes and other listed organic wastes covered in this rule.

XV. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR part 271.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA is implemented Federally in authorized States in the interim.

Certain portions of today's rule are being promulgated pursuant to sections 3004 (d) through (k), and (m), of RCRA (42 U.S.C. 6924 (d) through (k), and (m)). These will be added to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions in Table 1, as discussed in the following section of this preamble. Table 2 in 40 CFR 271.1(j) is also modified to indicate that this rule is a self-implementing provision of HSWA.

B. Effect on State Authorization

As noted above, today's rule, with the exception of the changes in the definition of solid waste (see preamble section IX, and further discussion in this section, below), will be implemented in authorized States until their programs are modified to adopt these rules and the modification is approved by EPA. Because the rule is promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. On December 18, 1992, EPA extended the period allowing interim authorization to January 1, 2003 (see 40 CFR 271.24(c) and 57 FR 60129).

Section 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modification to EPA for approval. The deadline by which the State would have to modify its program to adopt these regulations is specified in section 271.21(e). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modifications are approved. Of course, states with existing standards could continue to administer and enforce their standards as a matter of State law. In the period between the effective date of today's rule and the approval of state program modifications, the regulated communities in authorized states generally must comply with state regulations in addition to the provisions in today's rule. The regulated community should continue to consult with state agencies authorized to administer LDRs. In implementing the Federal program, EPA will work with States under agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of these regulations are not required to include standards equivalent to these regulations in their application. However, the State must modify its program by the deadline set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these regulations must include standards equivalent to these regulations in their application. The requirements a state must meet when submitting its final authorization application are set forth in 40 CFR 271.3.

The regulations promulgated today need not affect the State's Underground Injection Control (UIC) primacy status. A State currently authorized to administer the UIC program under the Safe Drinking Water Act (SDWA) could continue to do so without seeking authority to administer the amendments that will be promulgated at a future date. However, a State which wished to implement Part 148 and receive authorization to grant exemptions from the land disposal restrictions would have to demonstrate that it had the requisite authority to administer sections 3004 (f) and (g) of RCRA. The conditions under which such an authorization may take place are summarized below and are discussed in a July 15, 1985 final rule (50 FR 28728).

The modifications to the definition of solid waste in this rule (see preamble section IX) are based on non-HSWA authority. This portion of the rule, because it is not based on HSWA authority, will be applicable immediately only in those States that do not have final RCRA authorization. In authorized States, these requirements will not apply until the States revise their programs to adopt equivalent requirements under State law. In addition, this modification broadens the "closed-loop" recycling exclusion from the definition of solid waste. The modification to this rule is less stringent, or reduces the scope of, the Federal program. Therefore, although EPA strongly encourages timely adoption, authorized States are not required to modify their programs to

adopt regulations consistent with and equivalent to this provision.

XVI. Regulatory Requirements

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Executive Order No. 12866 requires agencies to determine whether a regulatory action is "significant." The Order defines a "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 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; 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."

The Agency estimated the costs of today's final rule to determine if it is a significant regulation as defined by the Executive Order. The incremental compliance costs for today's rule were estimated as a range from $194 to $219 million per year. Therefore, today's final rule is considered an economically significant rule, having an annual effect on the economy of over $100 million. The Agency prepared a regulatory impact analysis which analyzed the costs, economic impacts, and benefits of today's final rule.

This section of the preamble for today's final rule provides a discussion of the methodology used for estimating the costs, economic impacts and the benefits attributable to today's final rule, followed by a presentation of the cost, economic impact and benefit results. Limitations to these estimates are described in the results section. More detailed discussions of the methodology and results may be found in the background document, "Regulatory Impact Analysis of the Land Disposal Restrictions Final Rule for the Phase 2 Newly Listed and Identified Wastes," which has been placed in the docket for today's final rule.

1. Methodology Section

In today's final rule, the Agency is establishing treatment standards for newly identified and listed wastes, as well as any soils and debris which are contaminated with such wastes. (The Agency plans to develop alternative standards for hazardous soils as a part of the Hazardous Wastes Identification Rule (HWIR).) The newly identified wastes covered under today's rule include wastes displaying the organic toxicity characteristic (TC), and pesticide wastes that were not previously hazardous by the EP leaching procedure. The newly listed wastes are Coke By-product wastes and Chlorotoluene wastes.

Of the newly regulated hazardous soil in today's rule, the only existing volumes are soils contaminated with TC wastes. (Any volumes of soil contaminated with F037 and F038 listed wastes which exist are not covered in today's rule, but are being covered in a future Agency rulemaking.) Finally, the Agency is promulgating new testing and recordkeeping requirements, as well as reducing other recordkeeping requirements.

Furthermore, today's final rule proposes Universal Treatment Standards (UTS) for wastes already regulated under the LDRs. The Agency's analysis includes an analysis of the volumes affected by this change in treatment levels. (In the switch to UTS levels there are cases where the new UTS level is less stringent than the existing listing levels, as well as cases where the UTS is more stringent than existing levels. Either of these cases would have the potential to change the costs associated with treatment of these wastes.)

a. Methodology for Estimating the Affected Universe

In determining the costs, economic impacts, and benefits associated with today's rule, the Agency estimated the volumes of TC nonwastewaters, Coke By-Product wastes, and Chlorotoluene wastes affected by today's rule. For the TC wastes, the Agency employed the 1995 volume estimates presented for each affected waste in the Agency's 1992 TC Census Database (hereafter referred to as the "TC Survey"). (There are several ways in which the volumes employed for the capacity determinations differ from those used in the RIA.) The capacity determinations section of the preamble describes the methods used there to determine volumes. The scope of the RIA differs from that of the capacity determination in the "time window" analyzed. The RIA examines the short- and long-term impacts from the rule. Capacity determinations, on the other hand, are made for a two year time frame beginning at the promulgation of today's rule.

The Agency employed the volumes of Coke By-Products and Chlorotoluene wastes estimated in their respective listing analyses. For Coke By-Products, current management practices suggest that no volumes will be land disposed.

b. Cost Methodology

The cost analysis estimates the national level incremental costs which will be incurred as a result of today's rule. The cost estimates for both the baseline and post-regulatory scenarios are calculated employing: (i) The facility wastestream volume, (ii) the management practice (baseline or post-regulatory) assigned to that wastestream, and (iii) the unit cost associated with that practice. Summing the costs for all facilities produces the total costs for the given waste and scenario. Subtracting the baseline cost from the post-regulatory cost produces the national incremental cost associated with today's rule for the given waste. The unit costs include costs for Subtitle D and Subtitle C disposal (as appropriate), and transportation costs where necessary; all dollar estimates are in 1993 dollars (unless otherwise noted.)

Each section below summarizes the baseline and post-regulatory management practices assignments for each waste. The unit costs employed for the management practices are summarized in the RIA background document for today's rule.

The cost methodology section includes three sub-sections: (i) TC organic wastes, (ii) Other newly identified wastes, (iii) Testing, record-keeping, and permit modification costs.

i. Organic Toxicity Characteristic Wastes (D018–D043)

The standards established in today's rule for the organic TC wastes require the treatment of all underlying hazardous constituents. The affected TC wastes can be divided into three groups: TC nonwastewaters, TC soils, and TC debris. While TC wastewaters which are not managed in CWA or CWA-equivalent units are being regulated in today's rule, the current management practices for these volumes do not trigger land disposal (RCRA exempt tanks, etc.), and therefore are not subject to the LDRs. Below, EPA describes the method of estimating the costs incurred in complying with the TC standards in today's rule.

In establishing a baseline for the TC nonwastewaters, TC hazardous soils, and TC hazardous debris affected by today's rule, the Agency assumed Subtitle C landfilling as the current management practice. The Agency believes that there are TC wastes which

are not affected by today's rule because they are already being treated to comply with the standards established in today's rule (e.g.: wastes with high BTU value which are being used as fuel, etc.). The Agency assumed that landfilling was occurring on-site for noncommercial (company captive) facilities, and off-site for commercial facilities. Employing today's requirement of treating for all underlying constituents reasonably expected to be present, the Agency developed technology assignments for the wastes at each facility. The assignments include a treatment technology (or treatment train where required), and subsequent Subtitle D disposal. These assignments were based on waste characterization and constituent concentration data. Where little or no such data were available for a wastestream, the weighted average unit cost was assigned (the weighted average unit cost was calculated separately for nonwastewaters, soils, and debris).

The Agency allows a generator of hazardous soil to apply for a treatability variance. The Agency, however, has not analyzed the potential short-term savings which could be realized in the management of hazardous soil, and therefore may have overestimated the cost impacts of the rule in the short-term. There is also some uncertainty where certain technologies will be available to treat TC nonwastewaters. The Agency performed a sensitivity analysis to characterize this uncertainty, which is included in the RIA Background Document.

ii. Other Newly Identified Wastes

In addition to organic TC wastes, the wastes affected by today's final rule include coke by-product and chlorotoluene wastes. Based on an economic analysis conducted by the Agency for the listing of coke by-product waste, generators recycle these wastes rather than disposing of them in Subtitle C landfills. Therefore, EPA estimates that negligible volumes of coke by-product wastes would be affected by this rule. For the chlorotoluene waste volumes, EPA conducted a detailed cost analysis using site specific data.

iii. Testing, Recordkeeping, and Permit Modification Costs

In addition to the costs for treatment of wastes, EPA estimated the incremental costs of the testing and recordkeeping requirements in today's rule. Testing and recordkeeping costs were developed for all wastes addressed in today's rule.

The Agency examined the incremental cost of the testing requirements under today's rule. The Agency considered the baseline scenario to include testing for waste identification. The post-regulatory scenario would include testing for waste identification, testing to determine the number and concentration of constituents requiring treatment, and testing following treatment to ensure compliance with the standards.

For the analysis of recordkeeping costs, the Agency employed the estimates developed in the Information Collection Request (ICR) for today's rule. These estimates were employed in a facility specific analysis to develop a total incremental cost associated with the testing and recordkeeping requirements in today's rule.

The Agency also performed a sensitivity analysis on potential permit modification costs for facilities which may switch to on-site treatment. EPA applied a schedule of payments based on the costs of permit modifications to a group of nine facilities. The results of this analysis are provided in the Background Document RIA.

c. Waste Minimization Methodology

Since reducing waste generation may be less costly than treating these wastes to LDR standards, the Agency performed an analysis examining the potential waste minimization alternatives available to facilities. The analysis followed a multi-step methodology which included: (1) Develop a profile of the industries which indicated plans for waste minimization in the 1992 TC Survey Database, (2) select industries to examine which would be representative of the TC waste universe, (3) make telephone data verification calls to facilities within these industries, (4) determine the cost components for the post-regulatory and waste minimization scenarios for all wastestreams for those facilities, (5) estimate whether potential total costs/cost savings for the waste minimization and the post-regulatory (i.e., without waste minimization) scenarios would be a profitable investment for the firms, and (6) extrapolate results to the TC waste universe, and determine overall cost/cost savings.

d. Economic Impact Methodology

The economic effects of today's final rule are defined as the difference between the industrial activity under post-regulatory conditions and the industrial activity in the absence of regulation (i.e., baseline conditions). It should be noted that the volumes used for the economic impacts analysis do not include the reduction in volumes, and thus in costs, from waste minimization practices.

The Agency has evaluated the economic impacts for facilities managing organic TC wastes on a facility specific basis, limited only by the extent that data were available. EPA estimated the economic effects by comparing incremental annual compliance costs to a number of company financial measures, such as revenues, cost of operations, operating income, and net income. Financial data were obtained from Standard & Poor's Corporation Descriptions for the last fiscal year reported.

Since EPA believes that no costs will be associated with the treatment standards for coke by-products in the final rule, no economic impacts will be associated with regulation of these wastes. Economic impacts of compliance for facilities currently land disposing chlorotoluenes were evaluated in aggregated form, as information relating to these wastes are proprietary.

e. Benefits Methodology

This section discusses the benefit estimates for today's rule. The section includes: i. Analysis of the universal treatment standards, ii. hazardous waste recycling exemption, iii. groundwater pathway benefits, and iv. air pathway benefits.

i. Analysis of the Impact of the Universal Treatment Standards

To determine the cost implications of the Universal Treatment Standards (UTS), the Agency compared the UTS levels for each constituent to those levels established for each constituent in each waste code in the Land Disposal Restrictions (LDR) program to date.

The Agency assumed that there would only be a cost impact when the levels were sufficiently different to require a change in the treatment technology used in order to meet the new UTS levels. The comparison of levels rendered three results: (a) No cost impact because the constituent levels were the same, (b) no cost impact because the constituent levels were within one order of magnitude of each other, or (c) a potential cost impact because the constituent levels were greater than one order of magnitude apart.

Upon identifying those waste code/constituent pairs which were significantly different (i.e., greater than one order of magnitude), the Agency developed an estimate of the costs/cost savings based on the incremental difference in the previous technology

required and the new technology required to meet the specified levels.

ii. Hazardous Waste Recycling Exemption

The Agency also estimated the potential cost savings resulting from the hazardous waste recycling exemption for K069 wastes. Obtaining volumes data from the Biennial Reporting System (BRS), and employing unit cost data, the Agency calculated the cost savings associated with the change allowed in management practices. The Agency limited the analysis to K069 wastestreams that are not mixed with other hazardous waste codes, since these mixtures may not be amenable or legal for recycling.

iii. Human Health Risk Reduction—Groundwater Pathway

The Agency evaluated two types of human health benefits for today's rule: reduction in human health risks via the groundwater pathway, and reduction in human health risks via the air pathway. EPA's analysis of the benefits of today's rule covers TC wastes only. These wastes dominate the other wastestreams covered by today's rule in terms of volume. Moreover, these are the only wastes for which the Agency had the data necessary to conduct a benefits assessment, in terms of attributes such as constituent concentrations and facility-specific wastestream volumes.

The fundamental assumption underlying EPA's approach for assessing groundwater risk reduction is that Subtitle C containment is completely effective in the short-term, i.e., over a period of about 30 years, but that in the longer term, containment systems will fail. The benefits analysis performed for today's rule examines this potential long-term risk which would be avoided under today's rule (i.e., only occurring at least 30 years into the future). The difference in risks from the baseline to the post-regulatory condition is the measure of incremental benefit associated with today's rule.

The basic approach involves the following steps (which are elaborated upon in the RIA background document, which has been placed in the docket for today's rule). (1) The Agency employed waste concentration data from the TC Survey to represent waste concentrations. (2) EPA calculated the mean concentration of each constituent at each facility, weighted across the volume of all TC wastes managed at that facility. (3) EPA calculated the risk that would be posed by consumption of leachate, for both cancer and non-cancer effects, at each facility. (4) EPA developed a set of dilution/attenuation factors (DAF) to represent the effect of fate and transport processes in a homogeneous ground-water system. For each facility, the Agency divided the risk posed by the consumption of leachate by the DAF (expressed as a probability distribution) to yield the risk posed by predicted concentrations in water from hypothetical exposure wells. (5) EPA then summed the predicted risks across all facilities to develop an estimate of the distribution of individual risk at facilities managing untreated TC wastes. In addition, the Agency simulated the post-regulatory scenario, and summed the predicted risks across facilities, and developed the incremental risk reduction attributable to today's rule. (6) EPA subsequently developed an estimate of the potential incremental population risk using 1990 population estimates around each site. The Agency used standard assumptions for body weight (70 kg) and water intake (2 liters per day) for 9 years.

v. Human Health Risk Reduction—Air Pathway

Constituents contained in TC waste, soil, and debris may be emitted to air through volatilization and dust entrainment. Reducing the concentrations of TC constituents through the treatment standards set in today's rule reduces the potential for air emissions, and the risks posed by those air emissions. The goal of the air pathway risk analysis was to characterize baseline (pre-LDR) risk and the reduction in baseline risk resulting from regulatory requirements in today's rule.

The Agency's basic approach for the air pathway risk analysis involves the following steps (which are elaborated upon in the RIA background document, which has been placed in the docket for today's rule). (1) EPA used bulk waste concentration data from the TC Survey to represent waste concentrations. (2) the Agency calculated the mean concentration of each constituent at each facility, weighted across the volume of all TC wastes managed at that facility. (3) EPA calculated the unit area managing TC wastes. (4) EPA estimated emissions due to volatilization and dust entrainment for each constituent at each facility. (5) The Agency evaluated the atmospheric transport for each constituent. EPA then estimated exposure concentrations at several downwind points corresponding to potential exposure locations. The Agency employed standard high-end assumptions of body weight (70 kg) and 70-year lifetime. (6) The Agency calculated individual cancer risk and non-cancer risk across the facilities, using the modeled exposure assumptions. (7) EPA calculated population risk for exposed populations. (8) The Agency then simulated the risk under the regulatory requirements in today's rule, and determined the incremental risk reduction.

2. Results Section

a. Volume Results

The Agency has estimated the volumes affected by today's rule. A total of 295,000 tons per year of organic TC wastes (D018–D043) are affected by today's rule; this volume includes 167,000 tons per year of nonwastewaters, 94,000 tons per year of hazardous soil, and 34,000 tons per year of hazardous debris. The volume estimates used in the capacity analysis differ, as described above, from those estimates employed in the regulatory analysis. See the regulatory analysis background document for a more detailed discussion of these differences.

In addition, there are 30 tons per year of Chlorotoluene wastes affected by today's rule. The Agency also estimates that 9,760 tons per year of K069 waste will be affected as a result of the hazardous waste recycling exemption.

b. Cost Results

Exhibit XVI–1 summarizes the results of the cost analysis for today's final rule. In total, today's final rule would have an incremental annual cost of between $194 and $219 million. The lower bound cost estimate represents the effects of waste minimization compliance cost savings. In addition, there is a potential cost savings associated with the UTS standards and the hazardous waste recycling exemption of $2.1 million per year.

EXHIBIT XVI–1.—SUMMARY OF COST IMPACTS

Waste type	Post-regulatory cost (million $/yr)	Baseline cost (million $/yr)	Incremental cost (million $/yr)
Organic TC Wastes (D018–D043):			
Nonwastewaters	175	30	145
Soil	52	17	35
Debris	44	8	36
Waste Minimization	.....	.....	(25)
Chlorotoluenes	0.1	<0.1	<0.1
Test & Recordkeeping	.....	.....	3

EXHIBIT XVI–1.—SUMMARY OF COST IMPACTS—Continued

Waste type	Post-regulatory cost (million $/yr)	Baseline cost (million $/yr)	Incremental cost (million $/yr)
Subtotal for All Newly Regulated Wastes	272	56	194 to 219
Previously Regulated Wastes Affected by Rule:			
K069 Recycling Wastes	0	2.0	(2.0)
Cyanide Wastes (UTS Analysis)	66.5	66.6	(0.1)
Subtotal for All Previously Regulated Wastes	66.5	68.6	(2.1)

Note: The cost impact shown for waste minimization reflects a potential compliance cost savings, and therefore is shown as a range. See the write up of the waste minimization results for more details.

i. Organic TC Wastes

As described above, EPA conducted a facility specific cost analysis for those facilities managing organic TC waste. The incremental costs for the TC wastes, presented in Exhibit XVI–1, are between $191 and $216 million per year. Sixty-seven percent of the total cost, in the upper bound, is for the treatment of organic TC nonwastewaters, and 16 percent and 17 percent is for the treatment of organic TC contaminated soil and debris, respectively.

ii. Other Newly Regulated Wastes

Since current management practices show that no coke by-product wastes are landfilled, as a result of the coke by-product listing rule (August 18, 1992, at 57 FR 37284), EPA estimates that there are no cost impacts associated with the treatment standards for coke by-product wastes. The incremental cost for chlorinated toluenes is estimated to be less than $0.1 million annually.

iii. Testing, Recordkeeping, Permit Modification Costs

The analysis of the testing requirements in today's rule estimates incremental costs of approximately $3 million per year. The costs for the recordkeeping requirements were estimated to be approximately $490,000 per year. These costs are described in more detail in the Regulatory Impact Analysis background document developed for today's rule, which has been placed in the Agency's docket.

c. Waste Minimization

Through the methodology outlined above, the Agency analyzed the cost implications of waste management alternatives involving waste minimization in today's rule. The analysis shows that there is a potential savings of $25 million per year quantifiable in comparing current management practices to waste minimization activities which could be implemented. The Agency presents the cost impact of today's rule as a range from $0 to $25 million per year, representing the cost savings possible through waste minimization activities.

In performing the waste minimization analysis, the Agency focused on specific process for two industries for which data were available. This approach allowed the analysis to be detailed in nature, providing a close examination of facility compliance alternatives. However, in doing so, the Agency believes it has underestimated the potential savings due to waste minimization. In addition, the Agency has not attempted to address any further source reduction, waste minimization, or innovative technology development which may result from today's rule.

d. Economic Impact Results

For the 14 companies with non-commercial, or captive, landfills that receive the company's waste (from the TC Survey), only one company would have a ratio of incremental compliance cost to cost of operations greater than one-half percent; all other facilities would experience even lower economic impacts resulting from today's rule.

Since no costs are associated with the treatment standards for coke by-products, no economic impacts are expected. Based on a ratio analysis of incremental cost to total sales, none of the chlorinated toluene generating facilities is expected to experience significant impacts as a result of the final rule.

e. Benefit Estimate Results

The benefit estimates for today's rule include both reduction in risk to human health, as well as incremental cost savings. Cost savings are estimated for the Universal Treatment Standards (UTS), cost savings resulting from changes to the hazardous waste recycling exemptions. Human health benefits are estimated for cancer and non-cancer risks.

However, there are some benefits which the Agency has not attempted to quantify which are potentially attributable to today's rule. For example, the Agency has not attempted to quantify any potential non-use value benefits from protection of resources through treatment of hazardous wastes.

Furthermore, the risk analysis performed by the Agency for today's rule does not account for many other potential benefits from today's rule. Ecological risk reduction from treatment of wastes under today's rule has not been quantified. Nor do the Agency's air and groundwater benefit estimates account for karst terrain, complex flow situations, or other factors which could contribute to underestimates of benefits. These unquantified benefits are discussed at greater length in the regulatory impact background document for today's rule.

i. Universal Treatment Standards Analysis

The Agency's analysis of the cost impacts realized due to the Universal Treatment Standards requiring/allowing a change in treatment technology from that required under the existing standards produced a cost savings of approximately $100,000 per year. The only wastes for which the Agency found that the UTS standards required/allowed a change in treatment were the cyanide wastes.

The Agency received a number of favorable comments on the adoption of the UTS standards. These commenters stated that the UTS would allow them to save much more in operation costs than the Agency has quantified in the above analysis. One commenter stated that they would save approximately $366,000 annually and 1736 hours per year in manhour savings associated with the UTS for F024. And another commenter stated that they would save approximately $740,000 per year as a result of the UTS. A more thorough description of these cost savings is shown in the Regulatory Impact Analysis background document developed for today's rule, which has been placed in the Agency's docket.

ii. Hazardous Waste Recycling Exemption

The analysis performed by the Agency for the cost impacts associated with the recycling exemption for K069 produced a savings of approximately $2 million per year. A detailed description of the cost savings for K069 is shown in the Regulatory Impact Analysis background document developed for today's rule, which has been placed in the Agency's docket.

iii. Results—Groundwater Pathway

This section presents results for the baseline and post-regulatory risk analyses. For each case, results for individual cancer and non-cancer risk are presented for both high end (i.e. the 90th percentile of the distribution) and central tendency (i.e. 50th percentile of the distribution) risk estimates. The section concludes with population risk estimates for cancer risks.

The results, presented in full in the RIA background document which is included in the docket for today's rule, show that the central tendency cancer risk estimate is expected to be zero. The high-end individual cancer risk is 4×10^{-7}. For the post-regulatory scenario, EPA assumed that all constituents would be treated to universal standards. For the post-regulatory case, the central tendency risk estimate is zero, and the high-end risk estimate is 3×10^{-6}.

Using the distribution of individual risks, the Agency calculated baseline and post-regulatory cancer population risks. Based on these assumptions, EPA estimates the baseline population cancer risk to be 0.24 cases per year in the central tendency. The post-regulatory population cancer risk is about 0.02 cases per year in the central tendency. In other words, the regulatory option reduces 0.22 cases per year in the central tendency.

For the non-cancer risks, the analysis shows that the 99th percentile baseline exposure level is less than the reference dose, using central tendency assumptions. The population risk estimates show 2000 people, in the central tendency scenario, who are exposed to non-cancer risk above the threshold.

There are a number of limitations to the groundwater pathway analysis. The timeframe to which these benefits are attributable begins 30 years following promulgation of the rule. The analysis does not account for any existing regulations which would mitigate risks from groundwater (e.g., Clean Water Act). In addition, one of the wastestreams which contributes a large proportion of the groundwater population risk is made up primarily of PCBs, which are not expected to migrate any appreciable distance in groundwater. The DAF used in the analysis was calculated based on drinking wells being within one mile of the facility, and was not adjusted to accord with the population estimates used in the analysis which are based on a two-mile distance. The DAF distribution is not constituent-specific and accounts only for homogeneous flow situations.

iv. Results—Air Pathway

This section provides results for the air pathway, for the baseline and post-regulatory scenarios.

It should be noted that the high end scenario models hypothetical receptors. Approximately 26 of the 35 modeled facilities (74 percent) have individual cancer risks exceeding 10^{-6} for the high end scenario in the baseline. For the high end scenario, the non-cancer risk ratio exceeds one at one facility.

In the post-regulatory scenario, individual cancer risk is lowered considerably, indicating that at most of the facilities risk is driven by TC constituents. In the high end scenario, eight facility(s) have risks exceeding 10^{-6}. Doses of all non-carcinogens are well below reference doses.

For the population risk estimates, the Agency determined that the central tendency incremental benefits are approximately 0.037. For the incremental benefits of today's rule, the Agency performed a sensitivity analysis, described in the RIA background document, which examines the risk implications of changing volatilization rates under different assumptions of landfill cover and frequency of waste placement.

There are a number of limitations to the air pathway analysis. Facilities which were modeled in the analysis were assumed to continue to dispose of treated waste on-site, which, for some facilities, may not be the case. In addition, due to limitations in the model employed, wastes were assumed to be disposed of only one time per year. A sensitivity analysis was conducted and is included in the RIA Background Document, which examines the effect on the emissions rate from this assumption. Finally, only wastestreams with all the necessary information were analyzed. This limitation could have the effect of either under- or overestimating the risks from the air pathway.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, when an agency publishes a notice of rulemaking, for a rule that will have a significant effect on a substantial number of small entities, the agency must prepare and make available for public comment a regulatory flexibility analysis that considers the effect of the rule on small entities (i.e.: small businesses, small organizations, and small governmental jurisdictions). Under the Agency's Revised Guidelines for Implementing The Regulatory Flexibility Act, dated May 4, 1992, the Agency committed to considering regulatory alternatives in rulemakings when there were any economic impacts estimated on any small entities. Previous guidance required regulatory alternatives to be examined only when significant economic effects were estimated on a substantial number of small entities.

In assessing the regulatory approach for dealing with small entities in today's final rule, for both surface disposal of wastes and underground injection control, the Agency considered two factors. First, data on potentially affected small entities are unavailable. Second, due to the statutory requirements of the RCRA LDR program, no legal avenues exist for the Agency to provide relief from the LDR's for small entities. The only relief available for small entities is the existing small quantity generator provisions and conditionally exempt small quantity generator exemptions found in 40 CFR 262.11–12, and 261.5, respectively. These exemptions basically prescribe 100 kilograms (kg) per calendar month generation of hazardous waste as the limit below which one is exempted from complying with the RCRA standards.

Given these two factors, the Agency was unable to frame a series of small entity options from which to select the lowest cost approach; rather, the Agency was legally bound to regulate the land disposal of the hazardous wastes covered in today's rule without regard to the size of the entity being regulated.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and have been assigned control number 2050–0085. This rule will reduce the average reporting burden an estimated 0.75 hours per response, due to decreased paperwork requirements. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., S.W. (Mail Code 2138); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects

40 CFR Part 148

Environmental protection, Administrative practice and procedure. Hazardous waste, Reporting and

recordkeeping requirements, Water supply.

40 CFR Part 260

Administrative practice and procedure, Hazardous waste.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 264

Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 265

Hazardous waste, Packaging and containers.

40 CFR Part 266

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 271

Administrative practice and procedure, Hazardous materials transportation, Hazardous waste, Penalties, Reporting and recordkeeping requirements.

Dated: July 29, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for part 148 continues to read as follows:

Authority: Section 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*

2. Section 148.17 is amended by redesignating paragraph (b) as (d), redesignating paragraph (c) as (e), and by adding paragraphs (b) and (c) to read as follows:

§ 148.17 Waste specific prohibitions; newly listed wastes.

* * * * *

(b) Effective December 19, 1994 the wastes specified in 40 CFR 261.32 as EPA Hazardous waste numbers K141, K142, K143, K144, K145, K147, K148, K149, K150, and K151, are prohibited from underground injection.

(c) Effective September 19, 1995 the wastes specified in 40 CFR 261.23 as D001 (High TOC Subcategory as specified at 40 CFR 268.40), and in 40 CFR 261.24 as EPA Hazardous waste numbers D012, D013, D014, D015, D016, and D017 are prohibited from underground injection.

* * * * *

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

3. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

4. In § 260.30, the introductory text and paragraph (b) are revised to read as follows:

§ 260.30 Variances from classification as a solid waste.

In accordance with the standards and criteria in § 260.31 and the procedures in § 260.33, the Administrator may determine on a case-by-case basis that the following recycled materials are not solid wastes:

* * * * *

(b) Materials that are reclaimed and then reused within the original production process in which they were generated; and

* * * * *

5. In § 260.31, the introductory text of both paragraph (a) and (b), is revised to read as follows:

§ 260.31 Standards and criteria for variances from classification as a solid waste.

(a) The Administrator may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The Administrator's decision will be based on the following criteria:

* * * * *

(b) The Administrator may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

* * * * *

6. In § 260.32, the introductory text is revised to read as follows:

§ 260.32 Variance to be classified as a boiler.

In accordance with the standards and criteria in § 260.10 (definition of "boiler"), and the procedures in § 260.33, the Administrator may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in § 260.10, after considering the following criteria:

* * * * *

7. § 260.33 is revised to read as follows:

§ 260.33 Procedures for variances from classification as a solid waste or to be classified as a boiler.

The Administrator will use the following procedures in evaluating applications for variances from classification as a solid waste or applications to classify particular enclosed controlled flame combustion devices as boilers:

(a) The applicant must apply to the Administrator for the variance. The application must address the relevant criteria contained in § 260.31 or § 260.32.

(b) The Administrator will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or radio broadcast in the locality where the recycler is located. The Administrator will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The Administrator will issue a final decision after receipt of comments and after the hearing (if any).

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

8. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

9. Section 261.2 is amended by revising paragraph (e)(1)(iii) to read as follows:

§ 261.2 Definition of solid waste.

* * * * *

(e) * * *

(1) * * *

(iii) Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a

secondary process, the materials must be managed such that there is no placement on the land.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

10. The authority citation for Part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924 and 6925.

11. In § 264.1, paragraph (g)(6) is revised to read as follows:

§ 264.1 Purpose, scope and applicability.

* * * * *

(g) * * *

(6) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in § 260.10 of this chapter, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in § 268.40 of this chapter, Table Treatment Standards for Hazardous Wastes), or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in § 264.17(b).

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

12. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6935, and 6936.

13. In § 265.1, paragraph (c)(10) is revised to read as follows:

§ 265.1 Purpose, scope, and applicability.

* * * * *

(c) * * *

(10) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in § 260.10 of this chapter, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in § 268.40 of this chapter, Table Treatment Standards for Hazardous Wastes), or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in § 265.17(b).

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

14. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6934.

Subpart C—Recyclable Materials Used in a Manner Constituting Disposal

15. In § 266.23, paragraph (a) is revised to read as follows:

§ 266.23 Standards applicable to users of materials that are used in a manner that constitutes disposal.

(a) Owners or operators of facilities that use recyclable materials in a manner that constitutes disposal are regulated under all applicable provisions of subparts A through N of parts 124, 264, 265, 268, and 270 of this chapter and the notification requirement under section 3010 of RCRA. (These requirements do not apply to products which contain these recyclable materials under the provisions of § 266.20(b) of this chapter.)

* * * * *

Subpart H—Hazardous Waste Burned in Boilers and Industrial Furnaces

16. In § 266.100, the introductory text in paragraphs (c)(1), (c)(3), (c)(3)(i), and (c)(3)(ii); and paragraph (c)(3)(i)(A) are revised to read as follows:

§ 266.100 Applicability

* * * * *

(c) * * *

(1) To be exempt from §§ 266.102 through 266.111, an owner or operator of a metal recovery furnace or mercury recovery furnace, must comply with the following requirements, except that an owner or operator of a lead or a nickel-chromium recovery furnace, or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, must comply with the requirements of paragraph (c)(3) of this section:

* * * * *

(3) To be exempt from §§ 266.102 through 266.111, an owner or operator of a lead or nickel-chromium or mercury recovery furnace, or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, must provide a one-time written notice to the Director identifying each hazardous waste burned and specifying whether the owner or operator claims an exemption for each waste under this paragraph or paragraph (c)(1) of this section. The owner or operator must comply with the requirements of paragraph (c)(1) of this section for those wastes claimed to be exempt under that paragraph and must comply with the requirements below for those wastes claimed to be exempt under this paragraph (c)(3).

(i) The hazardous wastes listed in appendices XI, XII, and XIII, part 266, and baghouse bags used to capture metallic dusts emitted by steel manufacturing are exempt from the requirements of paragraph (c)(1) of this section, provided that:

(A) A waste listed in appendix IX of this part must contain recoverable levels of lead, a waste listed in appendix XII of this part must contain recoverable levels of nickel or chromium, a waste listed in appendix XIII of this part must contain recoverable levels of mercury and contain less than 500 ppm of 40 CFR part 261, appendix VIII organic constituents, and baghouse bags used to capture metallic dusts emitted by steel manufacturing must contain recoverable levels of metal; and

* * * * *

(ii) The Director may decide on a case-by-case basis that the toxic organic constituents in a material listed in appendix XI, XII, or XIII of this part that contains a total concentration of more than 500 ppm toxic organic compounds listed in appendix VIII, part 261 of this chapter, may pose a hazard to human health and the environment when burned in a metal recovery furnace exempt from the requirements of this subpart. In that situation, after adequate notice and opportunity for comment, the metal recovery furnace will become subject to the requirements of this subpart when burning that material. In making the hazard determination, the Director will consider the following factors:

* * * * *

Appendix XIII to Part 266 [Added]

17. Appendix XIII is added to read as follows:

Appendix XIII to Part 266—Mercury Bearing Wastes That May Be Processed in Exempt Mercury Recovery Units

These are exempt mercury-bearing materials with less than 500 ppm of 40 CFR Part 261, appendix VIII organic constituents when generated by manufacturers or users of mercury or mercury products.

1. Activated carbon
2. Decomposer graphite
3. Wood
4. Paper
5. Protective clothing
6. Sweepings
7. Respiratory cartridge filters
8. Cleanup articles

9. Plastic bags and other contaminated containers
10. Laboratory and process control samples
11. K106 and other wastewater treatment plant sludge and filter cake
12. Mercury cell sump and tank sludge
13. Mercury cell process solids
14 Recoverable levels or mercury contained in soil

PART 268—LAND DISPOSAL RESTRICTIONS

18. The authority citation for Part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

19. In § 268.1, paragraphs (c)(3)(ii), (e)(4), and (e)(5) are revised, and paragraph (c)(3)(iii) is added, to read as follows:

§ 268.1 Purpose, scope and applicability.

* * * * *

(c) * * *

(3) * * *

(ii) Do not exhibit any prohibited characteristic of hazardous waste at the point of injection; and

(iii) If at the point of generation the injected wastes include D001 High TOC subcategory wastes or D012–D017 pesticide wastes that are prohibited under § 148.17(c) of this chapter, those wastes have been treated to meet the treatment standards of § 268.40 before injection.

* * * * *

(e) * * *

(4) *De minimis* losses to wastewater treatment systems of commercial chemical product or chemical intermediates that are ignitable (D001), corrosive (D002), or are organic constituents that exhibit the characteristic of toxicity (D012–D043), and that contain underlying hazardous constituents as defined in § 268.2(i), are not considered to be prohibited wastes. *De minimis* is defined as losses from normal material handling operations (e.g. spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; and relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or

(5) Land disposal prohibitions for hazardous characteristic wastes do not apply to laboratory wastes displaying the characteristic of ignitability (D001), corrosivity (D002), or organic toxicity (D012—D043), that are mixed with other plant wastewaters at facilities whose ultimate discharge is subject to regulation under the CWA (including wastewaters at facilities which have eliminated the discharge of wastewater), provided that the annualized flow of laboratory wastewater into the facility's headworks does not exceed one per cent, or provided that the laboratory wastes' combined annualized average concentration does not exceed one part per million in the facility's headworks.

20. In § 268.2, paragraphs (g) and (i) are revised to read as follows:

§ 268.2 Definitions applicable in this part.

* * * * *

(g) *Debris* means solid material exceeding a 60 mm particle size that is intended for disposal and that is: A manufactured object; or plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in Subpart D, Part 268, namely lead acid batteries, cadmium batteries, and radioactive lead solids; Process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and Intact containers of hazardous waste that are not ruptured and that retain at least 75% of their original volume. A mixture of debris that has not been treated to the standards provided by § 268.45 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

* * * * *

(i) *Underlying hazardous constituent* means any constituent listed in § 268.48, Table UTS—Universal Treatment Standards, except zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific UTS treatment standard.

21. Section 268.7 is amended by revising paragraphs (a) and (b)(4)(ii), and by adding paragraph (b)(5)(iv) to read as follows:

§ 268.7 Waste analysis and recordkeeping.

(a) Except as specified in § 268.32, if a generator's waste is listed in 40 CFR part 261, subpart D, the generator must test his waste, or test an extract using test method 1311 (the Toxicity Characteristic Leaching Procedure, described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846 as incorporated by reference in § 260.11 of this chapter), or use knowledge of the waste, to determine if the waste is restricted from land disposal under this part. Except as specified in § 268.32, if a generator's waste exhibits one or more of the characteristics set out at 40 CFR part 261, subpart C, the generator must test an extract using test method 1311 (the Toxicity Characteristic Leaching Procedure, described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW–846)), or use knowledge of the waste, to determine if the waste is restricted from land disposal under this Part. If the generator determines that his waste exhibits the characteristic of ignitability (D001) (and is not in the High TOC Ignitable Liquids Subcategory or is not treated by CMBST or RORGS of § 268.42, Table 1), or the characteristic of corrosivity (D002), and is prohibited under § 268.37; and/or the characteristic of organic toxicity (D012–D043), and is prohibited under § 268.38, the generator must determine the underlying hazardous constituents (as defined in § 268.2, in the D001, D002, or D012–D043 wastes.

(1) If a generator determines that he is managing a restricted waste under this part and the waste does not meet the applicable treatment standards set forth in Subpart D of this part or exceeds the applicable prohibition levels set forth in § 268.32 or RCRA section 3004(d), with each shipment of waste the generator must notify the treatment or storage facility in writing of the appropriate treatment standards set forth in Subpart D of this part and any applicable prohibition levels set forth in § 268.32 or RCRA section 3004(d). The notice must include the following information:

(i) EPA Hazardous Waste Number;

(ii) The waste constituents that the treater will monitor, if monitoring will not include all regulated constituents, for wastes F001–F005, F039, D001, D002, and D012–D043. Generators must also include whether the waste is a nonwastewater or wastewater (as defined in § 268.2(d) and (f), and indicate the subcategory of the waste (such as "D003 reactive cyanide"), if applicable;

(iii) The manifest number associated with the shipment of waste;

(iv) For hazardous debris when using the alternative treatment technologies provided by § 268.45:

(A) The contaminants subject to treatment, as described in § 268.45(b); and

(B) An indication that these contaminants are being treated to comply with § 268.45.

(v) For hazardous debris when using the treatment standards for the contaminating waste(s) in § 268.40: the requirements described in paragraphs (a)(1) (i), (ii), (iii), and (vi) of this section.

(2) If a generator determines that he is managing a restricted waste under this Part, and determines that the waste can be land disposed without further treatment, with each shipment of waste he must submit, to the treatment, storage, or land disposal facility, a notice and a certification stating that the waste meets the applicable treatment standards set forth in subpart D of this part and the applicable prohibition levels set forth in § 268.32 or RCRA section 3004(d). Generators of hazardous debris that is excluded from the definition of hazardous waste under § 261.3(e)(2) of this chapter (i.e., debris that the Director has determined does not contain hazardous waste), however, are not subject to these notification and certification requirements.

(i) The notice must include the following information:

(A) EPA Hazardous Waste Number;

(B) The waste constituents that the treater will monitor, if monitoring will not include all regulated constituents, for wastes F001–F005, F039, D001, D002, and D012–D043. Generators must also include whether the waste is a nonwastewater or wastewater (as defined in § 268.2 (d) and (f)), and indicate the subcategory of the waste (such as "D003 reactive cyanide"), if applicable;

(C) The manifest number associated with the shipment of waste;

(D) Waste analysis data, where available.

(ii) The certification must be signed by an authorized representative and must state the following:

I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with the treatment standards specified in 40 CFR Part 268 Subpart D and all applicable prohibitions set forth in 40 CFR 268.32 or RCRA section 3004(d). I believe that the information I submitted is true, accurate and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of a fine and imprisonment.

(3) If a generator's waste is subject to an exemption from a prohibition on the type of land disposal method utilized for the waste (such as, but not limited to, a case-by-case extension under § 268.5, an exemption under § 268.6, or a nationwide capacity variance under subpart C of this part), with each shipment of waste he must submit a notice to the facility receiving his waste stating that the waste is not prohibited from land disposal. The notice must include the following information:

(i) EPA Hazardous Waste Number;

(ii) The waste constituents that the treater will monitor, if monitoring will not include all regulated constituents, for wastes F001–F005, F039, D001, D002, and D012–D043. Generators must also include whether the waste is a nonwastewater or wastewater (as defined in § 268.2 (d) and (f)), and indicate the subcategory of the waste (such as "D003 reactive cyanide"), if applicable;

(iii) The manifest number associated with the shipment of waste;

(iv) Waste analysis data, where available;

(v) For hazardous debris when using the alternative treatment technologies provided by § 268.45:

(A) The contaminants subject to treatment, as described in § 268.45(b); and

(B) An indication that these contaminants are being treated to comply with § 268.45.

(vi) For hazardous debris when using the treatment standards for the contaminating waste(s) in § 268.40: the requirements described in paragraphs (a)(1) (i), (ii), (iii), and (vi) of this section.

(4) If a generator is managing prohibited waste in tanks, containers, or containment buildings regulated under 40 CFR 262.34, and is treating such waste in such tanks, containers, or containment buildings to meet applicable treatment standards under subpart D of this part, the generator must develop and follow a written waste analysis plan which describes the procedures the generator will carry out to comply with the treatment standards. (Generators treating hazardous debris under the alternative treatment standards of Table 1, § 268.45, however, are not subject to these waste analysis requirements.) The plan must be kept on site in the generator's records, and the following requirements must be met:

(i) The waste analysis plan must be based on a detailed chemical and physical analysis of a representative sample of the prohibited waste(s) being treated, and contain all information necessary to treat the waste(s) in accordance with the requirements of this Part, including the selected testing frequency.

(ii) Such plan must be filed with the EPA Regional Administrator (or his designated representative) or State authorized to implement Part 268 requirements a minimum of 30 days prior to the treatment activity, with delivery verified.

(iii) Wastes shipped off-site pursuant to this paragraph must comply with the notification requirements of § 268.7(a)(2).

(5) If a generator determines whether the waste is restricted based solely on his knowledge of the waste, all supporting data used to make this determination must be retained on-site in the generator's files. If a generator determines whether the waste is restricted based on testing this waste or an extract developed using the test method described in Appendix I of this part, all waste analysis data must be retained on-site in the generator's files.

(6) If a generator determines that he is managing a restricted waste that is excluded from the definition of hazardous or solid waste or exempt from Subtitle C regulation, under 40 CFR 261.2 through 261.6 subsequent to the point of generation, he must place a one-time notice stating such generation, subsequent exclusion from the definition of hazardous or solid waste or exemption from RCRA Subtitle C regulation, and the disposition of the waste, in the facility's file.

(7) Generators must retain on-site a copy of all notices, certifications, demonstrations, waste analysis data, and other documentation produced pursuant to this section for at least five years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site treatment, storage, or disposal. The five year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator. The requirements of this paragraph apply to solid wastes even when the hazardous characteristic is removed prior to disposal, or when the waste is excluded from the definition of hazardous or solid waste under 40 CFR 261.2 through 261.6, or exempted from RCRA Subtitle C regulation, subsequent to the point of generation.

(8) If a generator is managing a lab pack waste and wishes to use the alternative treatment standard under § 268.42(c), with each shipment of waste the generator must submit a notice to the treatment facility in accordance with paragraph (a)(1) of this section, except that underlying hazardous constituents need not be determined. The generator must also comply with the requirements in paragraphs (a)(5) and (a)(6) of this section and must submit the following certification, which must be signed by an authorized representative:

I certify under penalty of law that I personally have examined and am familiar with the waste and that the lab pack contains only wastes which have not been excluded under appendix IV to 40 CFR part 268 or solid wastes not subject to regulation under 40 CFR part 261. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine or imprisonment.

(9) [Reserved]

(10) Small quantity generators with tolling agreements pursuant to 40 CFR 262.20(e) must comply with the applicable notification and certification requirements of paragraph (a) of this section for the initial shipment of the waste subject to the agreement. Such generators must retain on-site a copy of the notification and certification, together with the tolling agreement, for at least three years after termination or expiration of the agreement. The three-year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

(b) * * *

(4) * * *

(ii) The waste constituents to be monitored, if monitoring will not include all regulated constituents, for wastes F001–F005, F039, D001, D002, and D012–D043. Generators must also include whether the waste is a nonwastewater or wastewater (as defined in § 268.2 (d) and (f), and indicate the subcategory of the waste (such as D003 reactive cyanide), if applicable.

* * * * *

(5) * * *

(iv) For characteristic wastes D001, D002, and D012–D043 that are: subject to the treatment standards in § 268.40 (other than those expressed as a required method of treatment); that are reasonably expected to contain underlying hazardous constituents as defined in § 268.2(i); are treated on-site to remove the hazardous characteristic; and are then sent off-site for treatment of underlying hazardous constituents, the certification must state the following:

I certify under penalty of law that the waste has been treated in accordance with the requirements of 40 CFR 268.40 to remove the hazardous characteristic. This decharacterized waste contains underlying hazardous constituents that require further treatment to meet universal treatment standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

* * * * *

22. In § 268.9, paragraph (a), (d)(1)(i), and (d)(1)(ii) are revised, (d)(1)(iii) is removed and (d)(2) (i) and (ii) are added to read as follows:

§ 268.9 Special rules regarding wastes that exhibit a characteristic.

(a) The initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under subpart D of this part. For purposes of part 268, the waste will carry the waste code for any applicable listing under 40 CFR part 261, subpart D. In addition, the waste will carry one or more of the waste codes under 40 CFR part 261, subpart C, where the waste exhibits a characteristic, except in the case when the treatment standard for the waste code listed in 40 CFR part 261, subpart D operates in lieu of the treatment standard for the waste code under 40 CFR part 261, subpart C, as specified in paragraph (b) of this section. If the generator determines that his waste displays the characteristic of ignitability (D001) (and is not in the High TOC Ignitable Liquids Subcategory or is not treated by CMBST, or RORGS), or the waste code listed in 40 CFR part 261, subpart D operates in lieu of the treatment standard for the waste code under 40 CFR part 261, subpart C, as specified in paragraph (b) of this section. If the generator determines that his waste displays the characteristic of ignitability (D001) (and is not in the High TOC Ignitable Liquids Subcategory or is not treated by CMBST, or RORGS), or the characteristic of corrosivity (D002), and is prohibited under § 268.37; or that his waste displays the characteristic of toxicity (D012–D043), and is prohibited under § 268.38, the generator must determine the underlying hazardous constituents (as defined in § 268.2), in the D001, D002, or D012–D043 wastes.

* * * * *

(d) * * *

(1) * * *

(i) Name and address of the RCRA Subtitle D facility receiving the waste shipment; and

(ii) A description of the waste as initially generated, including the applicable EPA Hazardous Waste Number(s), treatability group(s), and underlying hazardous constituents (as defined in § 268.2(i) in D001 and D002 wastes prohibited under § 268.37, or D012–D043 wastes under § 268.38.

(2) * * *

(i) If treatment removes the characteristic but does not treat underlying hazardous constituents, then the certification found in § 268.7 (b)(5)(v) apply.

(ii) [Reserved]

Subpart C—Prohibitions on Land Disposal

23. In subpart C, § 268.38 is added to read as follows:

§ 268.38 Waste specific prohibitions—newly identified organic toxicity characteristic wastes and newly listed coke by-product and chlorotoluene production wastes.

(a) Effective December 19, 1994, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste numbers K141, K142, K143, K144, K145, K147, K148, K149, K150, and K151 are prohibited from land disposal. In addition, debris contaminated with EPA Hazardous Waste numbers F037, F038, K107–K112, K117, K118, K123–K126, K131, K132, K136, U328, U353, U359, and soil and debris contaminated with D012–D043, K141–K145, and K147–K151 are prohibited from land disposal. The following wastes that are specified in 40 CFR 261.24, Table 1 as EPA Hazardous Waste numbers: D012, D013, D014, D015, D016, D017, D018, D019, D020, D021, D022, D023, D024, D025, D026, D027, D028, D029, D030, D031, D032, D033, D034, D035, D036, D037, D038, D039, D040, D041, D042, D043 that are not radioactive, or that are managed in systems other than those whose discharge is regulated under the Clean Water Act (CWA), or that are zero dischargers that do not engage in CWA-equivalent treatment before ultimate land disposal, or that are injected in Class I deep wells regulated under the Safe Drinking Water Act (SDWA), are prohibited from land disposal. CWA-equivalent treatment means biological treatment for organics, alkaline chlorination or ferrous sulfate precipitation for cyanide, precipitation/sedimentation for metals, reduction of hexavalent chromium, or other treatment technology that can be demonstrated to perform equally or better than these technologies.

(b) On September 19, 1996, radioactive wastes that are mixed with D018–D043 that are managed in systems other than those whose discharge is regulated under the Clean Water Act (CWA), or that inject in Class I deep wells regulated under the Safe Drinking Water Act (SDWA), or that are zero dischargers that engage in CWA-equivalent treatment before ultimate land disposal, are prohibited from land disposal. CWA-equivalent treatment means biological treatment for organics, alkaline chlorination or ferrous sulfate precipitation for cyanide, precipitation/sedimentation for metals, reduction of hexavalent chromium, or other treatment technology that can be

demonstrated to perform equally or greater than these technologies. Radioactive wastes mixed with K141–K145, and K147–K151 are also prohibited from land disposal. In addition, soil and debris contaminated with these radioactive mixed wastes are prohibited from land disposal.

(c) Between December 19, 1994 and September 19, 1996, the wastes included in paragraphs (b) of this section may be disposed in a landfill or surface impoundment, only if such unit is in compliance with the requirements specified in § 268.5(h)(2) of this Part.

(d) The requirements of paragraphs (a), (b), and (c) of this section do not apply if:

(1) The wastes meet the applicable treatment standards specified in Subpart D of this part;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable alternate treatment standards established pursuant to a petition granted under § 268.44;

(4) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to these wastes covered by the extension.

(e) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in § 268.40, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable Subpart D levels, the waste is prohibited from land disposal, and all requirements of part 268 are applicable, except as otherwise specified.

Subpart D—Treatment Standards

24. Section 268.40 is revised to read as follows:

§ 268.40 Applicability of Treatment Standards.

(a) A waste identified in the table "Treatment Standards for Hazardous Wastes" may be land disposed only if it meets the requirements found in the table. For each waste, the table identifies one of three types of treatment standard requirements:

(1) All hazardous constituents in the waste or in the treatment residue must be at or below the values found in the table for that waste ("total waste standards"); or

(2) The hazardous constituents in the extract of the waste or in the extract of the treatment residue must be at or below the values found in the table ("waste extract standards"); or

(3) The waste must be treated using the technology specified in the table ("technology standard"), which are described in detail in § 268.42, Table 1—Technology Codes and Description of Technology-Based Standards.

(b) For wastewaters, compliance with concentration level standards is based on maximums for any one day, except for D004 through D011 wastes for which the previously promulgated treatment standards based on grab samples remain in effect. For all nonwastewaters, compliance with concentration level standards is based on grab sampling. For wastes covered by the waste extract standards, the test Method 1311, the Toxicity Characteristic Leaching Procedure found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW–846, as incorporated by reference in § 260.11, must be used to measure compliance. An exception is made for D004 and D008, for which either of two test methods may be used: Method 1311, or Method 1310, the Extraction Procedure Toxicity Test. For wastes covered by a technology standard, the wastes may be land disposed after being treated using that specified technology or an equivalent treatment technology approved by the Administrator under the procedures set forth in § 268.42(b).

(c) When wastes with differing treatment standards for a constituent of concern are combined for purposes of treatment, the treatment residue must meet the lowest treatment standard for the constituent of concern.

(d) Notwithstanding the prohibitions specified in paragraph (a) of this section, treatment and disposal facilities may demonstrate (and certify pursuant to 40 CFR 268.7(b)(5)) compliance with the treatment standards for organic constituents specified by a footnote in the table "Treatment Standards for Hazardous Wastes" in this section, provided the following conditions are satisfied:

(1) The treatment standards for the organic constituents were established based on incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O, or based on combustion in fuel substitution units operating in accordance with applicable technical requirements;

(2) The treatment or disposal facility has used the methods referenced in paragraph (d)(1) of this section to treat the organic constituents; and

(3) The treatment or disposal facility may demonstrate compliance with organic constituents if good-faith analytical efforts achieve detection limits for the regulated organic constituents that do not exceed the treatment standards specified in this section by an order of magnitude.

(e) For characteristic wastes (D001, D002, and D012–D043 that are subject to treatment standards in the following table "Treatment Standards for Hazardous Wastes," all underlying hazardous constituents (as defined in § 268.2(i)) must meet Universal Treatment Standards, found in § 268.48, Table UTS, prior to land disposal.

(f) The treatment standards for F001–F005 nonwastewater constituents carbon disulfide, cyclohexanone, and/or methanol apply to wastes which contain only one, two, or three of these constituents. Compliance is measured for these constituents in the waste extract from test Method 1311, the Toxicity Characteristic Leaching Procedure found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW–846, as incorporated by reference in § 260.11. If the waste contains any of these three constituents along with any of the other 25 constituents found in F001–F005, then compliance with treatment standards for carbon disulfide, cyclohexanone, and/or methanol are not required.

Treatment Standards for Hazardous Wastes

Note: The treatment standards that heretofore appeared in tables in §§ 268.41, 268.42, and 268.43 of this part have been consolidated into the table "Treatment Standards for Hazardous Wastes" in this section.

BILLING CODE 6560–50–P

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP" or Technology Code
D001	Ignitable Characteristic Wastes, except for the §261.21(a)(1) High TOC Subcategory, that are managed in non-CWA/ non-CWA-equivalent/non-Class I SDWA systems.	NA	NA	DEACT and meet §268.48 standards; or RORGS; or CMBST	DEACT and meet §268.48 standards, or RORGS; or CMBST
	Ignitable Characteristic Wastes, except for the §261.21(a)(1) High TOC Subcategory, that are managed in CWA/CWA-equivalent/Class I SDWA systems	NA	NA	DEACT	DEACT
	High TOC Ignitable Characteristic Liquids Subcategory based on 40 CFR 261.21(a)(1) - Greater than or equal to 10% total organic carbon. (Note: This subcategory consists of nonwastewaters only.)	NA	NA	NA	RORGS; or CMBST
D002	Corrosive Characteristic Wastes that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	NA	NA	DEACT and meet §268.48 standards	DEACT and meet §268.48 standards
	Corrosive Characteristic Wastes that are managed in CWA, CWA-equivalent, or Class I SDWA systems.	NA	NA	DEACT	DEACT
D002, D004, D005, D006, D007, D008, D009, D010, D011	Radioactive high level wastes generated during the reprocessing of fuel rods. (Note: This subcategory consists of nonwastewaters only.)	Corrosivity (pH)	NA	NA	HLVIT
		Arsenic	7440-38-2	NA	HLVIT
		Barium	7440-39-3	NA	HLVIT
		Cadmium	7440-43-9	NA	HLVIT
		Chromium (Total)	7440-47-3	NA	HLVIT
		Lead	7439-92-1	NA	HLVIT
		Mercury	7439-87-6	NA	HLVIT
		Selenium	7782-49-2	NA	HLVIT
		Silver	7440-22-4	NA	HLVIT
D003	Reactive Sulfides Subcategory based on 261.23(a)(5).	NA	NA	DEACT	DEACT
	Explosives Subcategory based on 261.23(a)(6), (7), and (8).	NA	NA	DEACT	DEACT
	Other Reactives Subcategory based on 261.23(a)(1).	NA	NA	DEACT	DEACT
	Water Reactive Subcategory based on 261.23(a)(2), (3), and (4). (Note: This subcategory consists of nonwastewaters only.)	NA	NA	NA	DEACT
	Reactive Cyanides Subcategory based on 261.23(a)(5).	Cyanides (Total)[7]	57-12-5	Reserved	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
D004	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for arsenic based on the extraction procedure (EP) in SW846 Method 1310.	Arsenic	7440-38-2	5.0	5.0 mg/l EP
		Arsenic; alternate[6] standard for nonwastewaters only.	7440-38-2	NA	5.0 mg/l TCLP
D005	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for barium based on the extraction procedure (EP) in SW846 Method 1310.	Barium	7440-39-3	100	100 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
D006	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for cadmium based on the extraction procedure (EP) in SW846 Method 1310.	Cadmium	7440-43-9	1.0	1.0 mg/l TCLP
	Cadmium Containing Batteries Subcategory. (Note: This subcategory consists of nonwastewaters only.)	Cadmium	7440-43-9	NA	RTHRM
D007	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for chromium based on the extraction procedure (EP) in SW846 Method 1310.	Chromium (Total)	7440-47-3	5.0	5.0 mg/l TCLP
D008	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for lead based on the extraction procedure (EP) in SW846 Method 1310.	Lead	7439-92-1	5.0	5.0 mg/l EP
		Lead; alternate[6] standard for nonwastewaters only	7439-92-1	NA	5.0 mg/l TCLP
	Lead Acid Batteries Subcategory (Note: This standard only applies to lead acid batteries that are identified as RCRA hazardous wastes and that are not excluded elsewhere from regulation under the land disposal restrictions of 40 CFR 268 or exempted under other EPA regulations (see 40 CFR 266.80).). (Note: This subcategory consists of nonwastewaters only.)	Lead	7439-92-1	NA	RLEAD
	Radioactive Lead Solids Subcategory (Note: these lead solids include, but are not limited to, all forms of lead shielding and other elemental forms of lead. These lead solids do not include treatment residuals such as hydroxide sludges, other wastewater treatment residuals, or incinerator ashes that can undergo conventional pozzolanic stablization, nor do they include organo-lead materials that can be incinerated and stablized as ash.). (Note: This subcategory consists of nonwastewaters only.)	Lead	7439-92-1	NA	MACRO
D009	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the extraction procedure (EP) in SW846 Method 1310; and contain greater than or equal to 260 mg/kg total mercury that also contain organics and are not incinerator residues. (High Mercury-Organic Subcategory)	Mercury	7439-97-6	NA	IMERC; OR RMERC
	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the extraction procedure (EP) in SW846 Method 1310; and contain greater than or equal to 260 mg/kg total mercury that that are inorganic, including incinerator residues and residues from RMERC. (High Mercury-Inorganic Subcategory)	Mercury	7439-97-6	NA	RMERC
	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the extraction procedure (EP) in SW846 Method 1310; and contain less than 260 mg/kg total mercury. (Low Mercury Subcategory)	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	All D009 wastewaters.	Mercury	7439-97-6	0.20	NA
	Elemental mercury contaminated with radioactive materials. (Note: This subcategory consists of nonwastewaters only.)	Mercury	7439-97-6	NA	AMLGM
	Hydraulic oil contaminated with Mercury Radioactive Materials Subcategory. (Note: This subcategory consists of nonwastewaters only.)	Mercury	7439-97-6	NA	IMERC

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"[6]; or Technology Code
D010	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for selenium based on the extraction procedure (EP) in SW846 Method 1310.	Selenium	7782-49-2	1.0	5.7 mg/l TCLP
D011	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for silver based on the extraction procedure (EP) in SW846 Method 1310.	Silver	7440-22-4	5.0	5.0 mg/l TCLP
D012	Wastes that are TC for Endrin based on the TCLP in SW846 Method 1311.	Endrin	72-20-8	BIODG; or INCIN	0.13 and meet §268.48 standards
		Endrin aldehyde	7421-93-4	BIODG; or INCIN	0.13 and meet §268.48 standards
D013	Wastes that are TC for Lindane based on the TCLP in SW846 Method 1311.	alpha-BHC	319-84-6	CARBN; or INCIN	0.066 and meet §268.48 standards
		beta-BHC	319-85-7	CARBN; or INCIN	0.066 and meet §268.48 standards
		delta-BHC	319-86-8	CARBN; or INCIN	0.066 and meet §268.48 standards
		gamma-BHC (Lindane)	58-89-9	CARBN; or INCIN	0.066 and meet §268.48 standards
D014	Wastes that are TC for Methoxychlor based on the TCLP in SW846 Method 1311.	Methoxychlor	72-43-5	WETOX or INCIN	0.18 and meet §268.48 standards
D015	Wastes that are TC for Toxaphene based on the TCLP in SW846 Method 1311.	Toxaphene	8001-35-2	BIODG or INCIN	2.6 and meet §268.48 standards
D016	Wastes that are TC for 2,4-D (2,4-Dichlorophenoxyacetic acid) based on the TCLP in SW846 Method 1311.	2,4-D (2,4-Dichlorophenoxyacetic acid)	94-75-7	CHOXD, BIODG, or INCIN	10 and meet §268.48 standards
D017	Wastes that are TC for 2,4,5-TP (Silvex) based on the TCLP in SW846 Method 1311.	2,4,5-TP (Silvex)	93-72-1	CHOXD or INCIN	7.9 and meet §268.48 standards
D018	Wastes that are TC for Benzene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Benzene	71-43-2	0.14	10 and meet §268.48 standards
D019	Wastes that are TC for Carbon tetrachloride based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Carbon tetrachloride	56-23-5	0.057	6.0 and meet §268.48 standards
D020	Wastes that are TC for Chlordane based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26 and meet §268.48 standards)
D021	Wastes that are TC for Chlorobenzene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Chlorobenzene	108-90-7	0.057	6.0 and meet §268.48 standards
D022	Wastes that are TC for Chloroform based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Chloroform	67-66-3	0.046	6.0 and meet §268.48 standards

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
D023	Wastes that are TC for o-Cresol based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	o-Cresol	95-48-7	0.11	5.6 and meet §268.48 standards
D024	Wastes that are TC for m-Cresol based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6 and meet §268.48 standards
D025	Wastes that are TC for p-Cresol based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6 and meet §268.48 standards
D026	Wastes that are TC for Cresols (Total) based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Cresol-mixed isomers (Cresylic acid) (sum of o-, m-, and p-cresol concentrations)	1319-77-3	0.88	11.2 and meet §268.48 standards
D027	Wastes that are TC for p-Dichlorobenzene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	p-Dichlorobenzene (1,4-Dichlorobenzene)	106-46-7	0.090	6.0 and meet §268.48 standards
D028	Wastes that are TC for 1,2-Dichloroethane based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	1,2-Dichloroethane	107-06-2	0.21	6.0 and meet §268.48 standards
D029	Wastes that are TC for 1,1-Dichloroethylene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	1,1-Dichloroethylene	75-35-4	0.025	6.0 and meet §268.48 standards
D030	Wastes that are TC for 2,4-Dinitrotoluene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	2,4-Dinitrotoluene	121-14-2	0.32	140 and meet §268.48 standards
D031	Wastes that are TC for Heptachlor based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Heptachlor	76-44-8	0.0012	0.066 and meet §268.48 standards
		Heptachlor epoxide	1024-57-3	0.016	0.066 and meet §268.48 standards
D032	Wastes that are TC for Hexachlorobenzene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Hexachlorobenzene	118-74-1	0.055	10 and meet §268.48 standards
D033	Wastes that are TC for Hexachlorobutadiene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Hexachlorobutadiene	87-68-3	0.055	5.6 and meet §268.48 standards
D034	Wastes that are TC for Hexachloroethane based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Hexachloroethane	67-72-1	0.055	30 and meet §268.48 standards
D035	Wastes that are TC for Methyl ethyl ketone based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Methyl ethyl ketone	78-93-3	0.28	36 and meet §268.48 standards

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
D036	Wastes that are TC for Nitrobenzene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Nitrobenzene	98-95-3	0.068	14 and meet § 268.48 standards
D037	Wastes that are TC for Pentachlorophenol based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Pentachlorophenol	87-86-5	0.089	7.4 and meet § 268.48 standards
D038	Wastes that are TC for Pyridine based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Pyridine	110-86-1	0.014	16 and meet § 268.48 standards
D039	Wastes that are TC for Tetrachloroethylene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Tetrachloroethylene	127-18-4	0.056	6.0 and meet § 268.48 standards
D040	Wastes that are TC for Trichloroethylene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Trichloroethylene	79-01-6	0.054	6.0 and meet § 268.48 standards
D041	Wastes that are TC for 2,4,5-Trichlorophenol based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	2,4,5-Trichlorophenol	95-95-4	0.18	7.4 and meet § 268.48 standards
D042	Wastes that are TC for 2,4,6-Trichlorophenol based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	2,4,6-Trichlorophenol	88-06-2	0.035	7.4 and meet § 268.48 standards
D043	Wastes that are TC for Vinyl chloride based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Vinyl chloride	75-01-4	0.27	6.0 and meet § 268.48 standards
F001, F002, F003, F004, & F005	F001, F002, F003, F004 and/or F005 solvent wastes that contain any combination of one or more of the following spent solvents: acetone, benzene, n-butyl alcohol, carbon disulfide, carbon tetrachloride, chlorinated fluorocarbons, chlorobenzene, o-cresol, m-cresol, p-cresol, cyclohexanone, o-dichlorobenzene, 2-ethoxyethanol, ethyl acetate, ethyl benzene, ethyl ether, isobutyl alcohol, methanol, methylene chloride, methyl ethyl ketone, methyl isobutyl ketone, nitrobenzene, 2-nitropropane, pyridine, tetrachloroethylene, toluene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, 1,1,2-trichloro-1,2,2-trifluoroethane, trichloroethylene, trichloromonofluoromethane, and/or xylenes (except as specifically noted in other subcategories). See further details of these listings in § 261.31	Acetone	67-64-1	0.28	160
		Benzene	71-43-2	0.14	10
		n-Butyl alcohol	71-36-3	5.6	2.6
		Carbon disulfide	75-15-0	3.8	NA
		Carbon tetrachloride	56-23-5	0.057	6.0
		Chlorobenzene	108-90-7	0.057	6.0
		o-Cresol	95-48-7	0.11	5.6
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		Cresol-mixed isomers (Cresylic acid) (sum of o-, m-, and p-cresol concentrations)	1319-77-3	0.88	11.2
		Cyclohexanone	108-94-1	0.36	NA

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		o-Dichlorobenzene	95-50-1	0.088	6.0
		Ethyl acetate	141-7-8	0.34	33
		Ethyl benzene	100-41-4	0.057	10
		Ethyl ether	60-29-7	0.12	160
		Isobutyl alcohol	78-83-1	5.6	170
		Methanol	67-56-1	5.6	NA
		Methylene chloride	75-9-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Methyl isobutyl ketone	108-10-1	0.14	33
		Nitrobenzene	98-95-3	0.068	14
		Pyridine	110-86-1	0.014	16
		Tetrachloroethylene	127-18-4	0.056	6.0
		Toluene	108-88-3	0.080	10
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	0.057	30
		Trichloroethylene	79-01-6	0.054	6.0
		Trichloromonofluoromethane	75-69-4	0.020	30
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
	F003 and/or F005 solvent wastes that contain any combination of one or more of the following three solvents as the only listed F001-5 solvents: carbon disulfide, cyclohexanone, and/or methanol. [formerly 268.41(c)]	Carbon disulfide	75-15-0	3.8	4.8 mg/l TCLP
		Cyclohexanone	108-94-1	0.36	0.75 mg/l TCLP
		Methanol	67-56-1	5.6	0.75 mg/l TCLP
	F005 solvent waste containing 2-Nitropropane as the only listed F001-5 solvent.	2-Nitropropane	79-46-9	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
	F005 solvent waste containing 2-Ethoxyethanol as the only listed F001-5 solvent.	2-Ethoxyethanol	110-80-5	BIODG; or INCIN	INCIN

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.	Cadmium	7440-43-9	0.69	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
F007	Spent cyanide plating bath solutions from electroplating operations.	Cadmium	7440-43-9	NA	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.	Cadmium	7440-43-9	NA	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.	Cadmium	7440-43-9	NA	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
F010	Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process.	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	NA
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.	Cadmium	7440-43-9	NA	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
F012	Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process	Cadmium	7440-43-9	NA	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
F020, F021, F022, F023, F026	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of: (1) tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives, excluding wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol (F020); (2) pentachlorophenol, or of intermediates used to produce its derivatives (i.e., F021); (3) tetra-, penta-, or hexachlorobenzenes under alkaline conditions (i.e., F022). Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of: (1) tri- or tetrachlorophenols, excluding wastes from equipment used only for the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol (F023); (2) tetra-, penta-, or hexachlorobenzenes under alkaline conditions (i.e., F026).	HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Pentachlorophenol	87-86-5	0.089	7.4
F027	Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component.).	HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
		Pentachlorophenol	87-86-5	0.089	7.4
F028	Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Wastes Nos. F020, F021, F023, F026, and F027.	HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
		Pentachlorophenol	87-86-5	0.089	7.4
F024	Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in §261.31 or §261.32.).	All F024 wastes	NA	INCIN	INCIN
		2-Chloro-1,3-butadiene	126-99-8	0.057	0.28
		3-Chloropropylene	107-05-1	0.036	30
		1,1-Dichloroethane	75-34-3	0.059	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		1,2-Dichloropropane	78-87-5	0.85	18
		cis-1,3-Dichloropropylene	10061-01-5	0.036	18

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		trans-1,3-Dichloropropylene	10061-02-6	0.036	18
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Hexachloroethane	67-72-1	0.055	30
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
F025	Condensed light ends from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. F025 - Light Ends Subcategory	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		1,1-Dichloroethylene	75-35-4	0.025	6.0
		Methylene chloride	75-9-2	0.089	30
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
		Vinyl chloride	75-01-4	0.27	6.0
	Spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. F025 - Spent Filters/Aids and Desiccants Subcategory	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachloroethane	67-72-1	0.055	30
		Methylene chloride	75-9-2	0.089	30
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
		Vinyl chloride	75-01-4	0.27	6.0

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
F037	Petroleum refinery primary oil/water/solids separation sludge-Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in agresive biological treatment units as defined in §261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in agressive biological treatment units) and K051 wastes are not included in this listing.	Acenaphthene	83-32-9	0.059	NA
		Anthracene	120-12-7	0.059	3.4
		Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Chrysene	218-01-9	0.059	3.4
		Di-n-butyl phthalate	84-74-2	0.057	28
		Ethylbenzene	100-41-4	0.057	10
		Fluorene	86-73-7	0.059	NA
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP
F038	Petroleum refinery secondary (emulsified) oil/water/solids separation sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air floatation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in agressive biological treatment units as defined in §261.31(b)(2) (including sludges and floats generated in one or more additional units after wastewaters have been treated in agressive biological units) anf F037, K048, and K051 are not included in this listing.	Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Chrysene	218-01-9	0.059	3.4
		Di-n-butyl phthalate	84-74-2	0.057	28
		Ethylbenzene	100-41-4	0.057	10
		Fluorene	86-73-7	0.059	NA
		Naphthalene	91-20-3	0.059	5.6

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[3] unless noted as "mg/l TCLP", or Technology Code
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP
F039	Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under subpart D of this part. (Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other Hazardous Wastes retains its EPA Hazardous Waste Number(s): F020, F021, F022, F026, F027, and/or F028.).	Acenaphthylene	208-96-8	0.059	3.4
		Acenaphthene	83-32-9	0.059	3.4
		Acetone	67-64-1	0.28	160
		Acetonitrile	75-05-8	5.6	NA
		Acetophenone	98-86-2	0.010	9.7
		2-Acetylaminofluorene	53-96-3	0.059	140
		Acrolein	107-02-8	0.29	NA
		Acrylonitrile	107-13-1	0.24	84
		Aldrin	309-00-2	0.021	0.066
		4-Aminobiphenyl	92-67-1	0.13	NA
		Aniline	62-53-3	0.81	14
		Anthracene	120-12-7	0.059	3.4
		Aramite	140-57-8	0.36	NA
		alpha-BHC	319-84-6	0.00014	0.066
		beta-BHC	319-85-7	0.00014	0.066
		delta-BHC	319-86-8	0.023	0.066
		gamma-BHC	58-89-9	0.0017	0.066
		Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[3] unless noted as "mg/l TCLP"; or Technology Code
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Benzo(g,h,i)perylene	191-24-2	0.0055	1.8
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Bromodichloromethane	75-27-4	0.35	15
		Methyl bromide (Bromomethane)	74-83-9	0.11	15
		4-Bromophenyl phenyl ether	101-55-3	0.055	15
		n-Butyl alcohol	71-36-3	5.6	2.6
		Butyl benzyl phthalate	85-68-7	0.017	28
		2-sec-Butyl-4,6-dinitrophenol (Dinoseb)	88-85-7	0.066	2.5
		Carbon disulfide	75-15-0	3.8	NA
		Carbon tetrachloride	56-23-5	0.057	6.0
		Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
		p-Chloroaniline	106-47-8	0.46	16
		Chlorobenzene	108-90-7	0.057	6.0
		Chlorobenzilate	510-15-6	0.10	NA
		2-Chloro-1,3-butadiene	126-99-8	0.057	NA
		Chlorodibromomethane	124-48-1	0.057	15
		Chloroethane	75-00-3	0.27	6.0
		bis(2-Chloroethoxy)methane	111-91-1	0.036	7.2
		bis(2-Chloroethyl)ether	111-44-4	0.033	6.0
		Chloroform	67-66-3	0.046	6.0
		bis(2-Chloroisopropyl)ether	108-60-1	0.055	7.2
		p-Chloro-m-cresol	59-50-7	0.018	14
		Chloromethane (Methyl chloride)	74-87-3	0.19	30
		2-Chloronaphthalene	91-58-7	0.055	5.6
		2-Chlorophenol	95-57-8	0.044	5.7

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		3-Chloropropylene	107-05-1	0.036	30
		Chrysene	218-01-9	0.059	3.4
		o-Cresol	95-48-7	0.11	5.6
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		Cyclohexanone	108-94-1	0.36	NA
		1,2-Dibromo-3-chloropropane	96-12-8	0.11	15
		Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15
		Dibromomethane	74-95-3	0.11	15
		2,4-D (2,4-Dichlorophenoxyacetic acid)	94-75-7	0.72	10
		o,p'-DDD	53-19-0	0.023	0.087
		p,p'-DDD	72-54-8	0.023	0.087
		o,p'-DDE	3424-82-6	0.031	0.087
		p,p'-DDE	72-55-9	0.031	0.087
		o,p'-DDT	789-02-6	0.0039	0.087
		p,p'-DDT	50-29-3	0.0039	0.087
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Dibenz(a,e)pyrene	192-65-4	0.061	NA
		m-Dichlorobenzene	541-73-1	0.036	6.0
		o-Dichlorobenzene	95-50-1	0.088	6.0
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Dichlorodifluoromethane	75-71-8	0.23	7.2
		1,1-Dichloroethane	75-34-3	0.059	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		1,1-Dichloroethylene	75-35-4	0.025	6.0
		trans-1,2-Dichloroethylene	156-60-5	0.054	30
		2,4-Dichlorophenol	120-83-2	0.044	14

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg. TCLP"; or Technology Code
		2,6-Dichlorophenol	87-65-0	0.044	14
		1,2-Dichloropropane	78-87-5	0.85	18
		cis-1,3-Dichloropropylene	10061-01-5	0.036	18
		trans-1,3-Dichloropropylene	10061-02-6	0.036	18
		Dieldrin	60-57-1	0.017	0.13
		Diethyl phthalate	84-66-2	0.20	28
		2-4-Dimethyl phenol	105-67-9	0.036	14
		Dimethyl phthalate	131-11-3	0.047	28
		Di-n-butyl phthalate	84-74-2	0.057	28
		1,4-Dinitrobenzene	100-25-4	0.32	2.3
		4,6-Dinitro-o-cresol	534-52-1	0.28	160
		2,4-Dinitrophenol	51-28-5	0.12	160
		2,4-Dinitrotoluene	121-14-2	0.32	140
		2,6-Dinitrotoluene	606-20-2	0.55	28
		Di-n-octyl phthalate	117-84-0	0.017	28
		Di-n-propylnitrosamine	621-64-7	0.40	14
		1,4-Dioxane	123-91-1	NA	170
		Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122-39-4	0.92	NA
		Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86-30-6	0.92	NA
		1,2-Diphenylhydrazine	122-66-7	0.087	NA
		Disulfoton	298-04-4	0.017	6.2
		Endosulfan I	939-98-8	0.023	0.066
		Endosulfan II	33213-6-5	0.029	0.13
		Endosulfan sulfate	1-31-07-8	0.029	0.13
		Endrin	72-20-8	0.0028	0.13
		Endrin aldehyde	7421-93-4	0.025	0.13
		Ethyl acetate	141-78-6	0.34	33

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Ethyl cyanide (Propanenitrile)	107-12-0	0.24	360
		Ethyl benzene	100-41-4	0.057	10
		Ethyl ether	60-29-7	0.12	160
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Ethyl methacrylate	97-63-2	0.14	160
		Ethylene oxide	75-21-8	0.12	NA
		Famphur	52-85-7	0.017	15
		Fluoranthene	206-44-0	0.068	3.4
		Fluorene	86-73-7	0.059	3.4
		Heptachlor	76-44-8	0.0012	0.066
		Heptachlor epoxide	1024-57-3	0.016	0.066
		Hexachlorobenzene	118-74-1	0.055	10
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachlorocyclopentadiene	77-47-4	0.057	2.4
		HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		Hexachloroethane	67-72-1	0.055	30
		Hexachloropropylene	1888-71-7	0.035	30
		Indeno (1,2,3-c,d) pyrene	193-39-5	0.0055	3.4
		Iodomethane	74-88-4	0.19	65
		Isobutyl alcohol	78-83-1	5.6	170
		Isodrin	465-73-6	0.021	0.066
		Isosafrole	120-58-1	0.081	2.6
		Kepone	143-50-8	0.0011	0.13
		Methacrylonitrile	126-98-7	0.24	84
		Methanol	67-56-1	5.6	NA
		Methapyrilene	91-80-5	0.081	1.5
		Methoxychlor	72-43-5	0.25	0.18

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		3-Methylcholanthrene	56-49-5	0.0055	15
		4,4-Methylene bis(2-chloroaniline)	101-14-4	0.50	30
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Methyl isobutyl ketone	108-10-1	0.14	33
		Methyl methacrylate	80-62-6	0.14	160
		Methyl methansulfonate	66-27-3	0.018	NA
		Methyl parathion	298-00-0	0.014	4.6
		Naphthalene	91-20-3	0.059	5.6
		2-Naphthylamine	91-59-8	0.52	NA
		p-Nitroaniline	100-01-6	0.028	28
		Nitrobenzene	98-95-3	0.068	14
		5-Nitro-o-toluidine	99-55-8	0.32	28
		p-Nitrophenol	100-02-7	0.12	29
		N-Nitrosodiethylamine	55-18-5	0.40	28
		N-Nitrosodimethylamine	62-75-9	0.40	NA
		N-Nitroso-di-n-butylamine	924-16-3	0.40	17
		N-Nitrosomethylethylamine	10595-95-6	0.40	2.3
		N-Nitrosomorpholine	59-89-2	0.40	2.3
		N-Nitrosopiperidine	100-75-4	0.013	35
		N-Nitrosopyrrolidine	930-55-2	0.013	35
		Parathion	56-38-2	0.014	4.6
		Total PCBs (sum of all PCB isomers, or all Aroclors)	1336-36-3	0.10	10
		Pentachlorobenzene	608-93-5	0.055	10
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		Pentachloronitrobenzene	82-68-8	0.055	4.8
		Pentachlorophenol	87-86-5	0.089	7.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Phenacetin	62-44-2	0.081	16
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Phorate	298-02-2	0.021	4.6
		Phthalic anhydride	85-44-9	0.055	NA
		Pronamide	23950-58-5	0.093	1.5
		Pyrene	129-00-0	0.067	8.2
		Pyridine	110-86-1	0.014	16
		Safrole	94-59-7	0.081	22
		Silvex (2,4,5-TP)	93-72-1	0.72	7.9
		2,4,5-T	93-76-5	0.72	7.9
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
		1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
		1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
		Toluene	108-88-3	0.080	10
		Toxaphene	8001-35-2	0.0095	2.6
		Bromoform (Tribromomethane)	75-25-2	0.63	15
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
		Trichloromonofluoromethane	75-69-4	0.020	30
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "m, TCLP"; or Technology Code
		1,2,3-Trichloropropane	96-18-4	0.85	30
		1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	0.057	30
		tris(2,3-Dibromopropyl) phosphate	126-72-7	0.11	NA
		Vinyl chloride	75-01-4	0.27	6.0
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Antimony	7440-36-0	1.9	2.1 mg/l TCLP
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Barium	7440-39-3	1.2	7.6 mg/l TCLP
		Beryllium	7440-41-7	0.82	NA
		Cadmium	7440-43-9	0.69	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	NA
		Fluoride	16964-48-8	35	NA
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Mercury	7439-97-6	0.15	0.025 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Selenium	7782-49-2	0.82	0.16 mg/l TCLP
		Silver	7440-22-4	0.43	0.30 mg/l TCLP
		Sulfide	8496-25-8	14	NA
		Thallium	7440-28-0	1.4	NA
		Vanadium	7440-62-2	4.3	NA
K001	Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.	Naphthalene	91-20-3	0.059	5.6
		Pentachlorophenol	87-86-5	0.089	7.4
		Phenanthrene	85-01-8	0.059	5.6
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP", or Technology Code
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K003	Wastewater treatment sludge from the production of molybdate orange pigments.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K004	Wastewater treatment sludge from the production of zinc yellow pigments.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K005	Wastewater treatment sludge from the production of chrome green pigments.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous).	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
	Wastewater treatment sludge from the production of chrome oxide green pigments (hydrated).	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	NA
K007	Wastewater treatment sludge from the production of iron blue pigments.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
K008	Oven residue from the production of chrome oxide green pigments.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K009	Distillation bottoms from the production of acetaldehyde from ethylene.	Chloroform	67-66-3	0.046	6.0
K010	Distillation side cuts from the production of acetaldehyde from ethylene.	Chloroform	67-66-3	0.046	6.0
K011	Bottom stream from the wastewater stripper in the production of acrylonitrile.	Acetonitrile	75-05-8	5.6	1.8
		Acrylonitrile	107-13-1	0.24	84
		Acrylamide	79-06-1	19	23
		Benzene	71-43-2	0.14	10
		Cyanide (Total)	57-12-5	1.2	590
K013	Bottom stream from the acetonitrile column in the production of acrylonitrile.	Acetonitrile	75-05-8	5.6	1.8

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Acrylonitrile	107-13-1	0.24	84
		Acrylamide	79-06-1	19	23
		Benzene	71-43-2	0.14	10
		Cyanide (Total)	57-12-5	1.2	590
K014	Bottoms from the acetonitrile purification column in the production of acrylonitrile.	Acetonitrile	75-05-8	5.6	1.8
		Acrylonitrile	107-13-1	0.24	84
		Acrylamide	79-06-1	19	23
		Benzene	71-43-2	0.14	10
		Cyanide (Total)	57-12-5	1.2	590
K015	Still bottoms from the distillation of benzyl chloride.	Anthracene	120-12-7	0.059	3.4
		Benzal chloride	98-87-3	0.055	6.0
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Phenanthrene	85-01-8	0.059	5.6
		Toluene	108-88-3	0.080	10
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
K016	Heavy ends or distillation residues from the production of carbon tetrachloride.	Hexachlorobenzene	118-74-1	0.055	10
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachlorocyclopentadiene	77-47-4	0.057	2.4
		Hexachloroethane	67-72-1	0.055	30
		Tetrachloroethylene	127-18-4	0.056	6.0
K017	Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.	bis(2-Chloroethyl)ether	111-44-4	0.033	6.0
		1,2-Dichloropropane	78-87-5	0.85	18
		1,2,3-Trichloropropane	96-18-4	0.85	30
K018	Heavy ends from the fractionation column in ethyl chloride production.	Chloroethane	75-00-3	0.27	6.0
		Chloromethane	74-87-3	0.19	NA

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		1,1-Dichloroethane	75-34-3	0.059	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachloroethane	67-72-1	0.055	30
		Pentachloroethane	76-01-7	NA	6.0
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
K019	Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production.	bis(2-Chloroethyl)ether	111-44-4	0.033	6.0
		Chlorobenzene	108-90-7	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		p-Dichlorobenzene	106-46-7	0.090	NA
		1,2-Dichloroethane	107-06-2	0.21	6.0
		Fluorene	86-73-7	0.059	NA
		Hexachloroethane	67-72-1	0.055	30
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	NA
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
K020	Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.	1,2-Dichloroethane	107-06-2	0.21	6.0
		1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
K021	Aqueous spent antimony catalyst waste from fluoromethanes production.	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Antimony	7440-36-0	1.9	2.1 mg/l TCLP
K022	Distillation bottom tars from the production of phenol/acetone from cumene.	Toluene	108-88-3	0.080	10
		Acetophenone	96-86-2	0.010	9.7

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Diphenylamine (difficult to distinguish from diphenylnitrosamine)	22-39-4	0.92	13
		Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86-30-6	0.92	13
		Phenol	108-95-2	0.039	6.2
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TC >
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
K023	Distillation light ends from the production of phthalic anhydride from naphthalene.	Phthalic anhydride (measured as Phthalic acid)	100-21-0	0.055	28
		Phthalic anhydride	85-44-9	0.055	28
K024	Distillation bottoms from the production of phthalic anhydride from naphthalene.	Phthalic anhydride (measured as Phthalic acid)	100-21-0	0.055	28
		Phthalic anhydride	85-44-9	0.055	28
K025	Distillation bottoms from the production of nitrobenzene by the nitration of benzene.	NA	NA	LLEXT fb SSTRP fb CARBN; or INCIN	INCIN
K026	Stripping still tails from the production of methyl ethyl pyridines.	NA	NA	INCIN	INCIN
K027	Centrifuge and distillation residues from toluene diisocyanate production.	NA	NA	CARBN; or INCIN	CMBST
K028	Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.	1,1-Dichloroethane	75-34-3	0.059	6.0
		trans-1,2-Dichloroethylene	156-60-5	0.054	30
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachloroethane	67-72-1	0.055	30
		Pentachloroethane	76-01-7	NA	6.0
		1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
		1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Cadmium	7440-43-9	0.69	NA
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
K029	Waste from the product steam stripper in the production of 1,1,1-trichloroethane.	Chloroform	67-66-3	0.046	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		1,1-Dichloroethylene	75-35-4	0.025	6.0
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		Vinyl chloride	75-01-4	0.27	6.0
K030	Column bodies or heavy ends from the combined production of trichloroethylene and perchloroethylene.	o-Dichlorobenzene	95-50-1	0.088	NA
		p-Dichlorobenzene	106-46-7	0.090	NA
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachloroethane	67-72-1	0.055	30
		Hexachloropropylene	1888-71-7	NA	30
		Pentachlorobenzene	608-93-5	NA	10
		Pentachloroethane	76-01-7	NA	6.0
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
K031	By-product salts generated in the production of MSMA and cacodylic acid.	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
K032	Wastewater treatment sludge from the production of chlordane.	Hexachlorocyclopentadiene	77-47-4	0.057	2.4
		Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
		Heptachlor	76-44-8	0.0012	0.066
		Heptachlor epoxide	1024-57-3	0.016	0.066
K033	Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane.	Hexachlorocyclopentadiene	77-47-4	0.057	2.4
K034	Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane.	Hexachlorocyclopentadiene	77-47-4	0.057	2.4
K035	Wastewater treatment sludges generated in the production of creosote.	Acenaphthene	83-32-9	NA	3.4
		Anthracene	120-12-7	NA	3.4
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Chrysene	218-01-9	0.059	3.4

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		o-Cresol	95-48-7	0.11	5.6
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		Dibenz(a,h)anthracene	53-70-3	NA	8.2
		Fluoranthene	206-44-0	0.068	3.4
		Fluorene	86-73-7	NA	3.4
		Indeno(1,2,3-cd)pyrene	193-39-5	NA	3.4
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
K036	Still bottoms from toluene reclamation distillation in the production of disulfoton.	Disulfoton	298-04-4	0.017	6.2
K037	Wastewater treatment sludges from the production of disulfoton.	Disulfoton	298-04-4	0.017	6.2
		Toluene	108-88-3	0.080	10
K038	Wastewater from the washing and stripping of phorate production.	Phorate	298-02-2	0.021	4.6
K039	Filter cake from the filtration of diethylphosphorodithioc acid in the production of phorate.	NA	NA	CARBN; or INCIN	CMBST
K040	Wastewater treatment sludge from the production of phorate.	Phorate	298-02-2	0.021	4.6
K041	Wastewater treatment sludge from the production of toxaphene.	Toxaphene	8001-35-2	0.0095	2.6
K042	Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T.	o-Dichlorobenzene	95-50-1	0.088	6.0
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
K043	2,6-Dichlorophenol waste from the production of 2,4-D.	2,4-Dichlorophenol	120-83-2	0.044	14
		2,6-Dichlorophenol	187-65-0	0.044	14
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
		Pentachlorophenol	87-86-5	0.089	7.4
		Tetrachloroethylene	79-01-6	0.056	6.0
		HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
K044	Wastewater treatment sludges from the manufacturing and processing of explosives.	NA	NA	DEACT	DEACT
K045	Spent carbon from the treatment of wastewater containing explosives.	NA	NA	DEACT	DEACT
K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.	Lead	7439-92-1	0.69	0.37 mg/l TCLP
K047	Pink/red water form TNT operations	NA	NA	DEACT	DEACT
K048	Dissolved air flotation (DAF) float from the petroleum refining industry.	Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Chrysene	218-01-9	0.059	3.4
		Di-n-butyl phthalate	84-74-2	0.057	28
		Ethylbenzene	100-41-4	0.057	10
		Fluorene	86-73-7	0.059	NA
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-33	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP
K049	Slop oil emulsion solids from the petroleum refining industry.	Anthracene	120-12-7	0.059	3.4
		Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Carbon disulfide	75-15-0	3.8	NA
		Chrysene	2218-01-9	0.059	3.4
		2,4-Dimethylphenol	105-67-9	0.036	NA
		Ethylbenzene	100-41-4	0.057	10
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Cyanides (Total)[7]	57-12-5	1.2	590
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry.	Benzo(a)pyrene	50-32-8	0.061	3.4
		Phenol	108-95-2	0.039	6.2
		Cyanides (Total)[7]	57-12-5	1.2	590
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
K051	API separator sludge from the petroleum refining industry.	Acenaphthene	83-32-9	0.059	NA
		Anthracene	120-12-7	0.059	3.4
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Chrysene	2218-01-9	0.059	3.4
		Di-n-butyl phthalate	105-67-9	0.057	28
		Ethylbenzene	100-41-4	0.057	10
		Fluorene	86-73-7	0.059	NA
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.08	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Cyanides (Total)[7]	57-12-5	1.2	590
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP
K052	Tank bottoms (leaded) from the petroleum refining industry.	Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		o-Cresol	95-48-7	0.11	5.6
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		2,4-Dimethylphenol	105-67-9	0.036	NA
		Ethylbenzene	100-41-4	0.057	10

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Toluene	108-88-3	0.08	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP
K060	Ammonia still lime sludge from coking operations.	Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Naphthalene	91-20-3	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Cyanides (Total)[7]	57-12-5	1.2	590
K061	Emission control dust/sludge from the primary production of steel in electric furnaces.	Antimony	7440-36-0	NA	2.1 mg/l TCLP
		Arsenic	7440-38-2	NA	5.0 mg/l TCLP
		Barium	7440-39-3	NA	7.6 mg/l TCLP
		Beryllium	7440-41-7	NA	0.014 mg/l TCLP
		Cadmium	7440-43-9	0.69	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Mercury	7439-97-6	NA	0.025 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Selenium	7782-49-2	NA	0.16 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
		Thallium	NA	NA	0.078 mg/l TCLP
		Zinc	7440-66-6	NA	5.3 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
K062	Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	NA
K069	Emission control dust/sludge from secondary lead smelting. - Calcium Sulfate (Low Lead) Subcategory	Cadmium	7440-43-9	0.69	0.19 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
	Emission control dust/sludge from secondary lead smelting. - Non-Calcium Sulfate (High Lead) Subcategory	NA	NA	NA	RLEAD
K071	K071 (Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used) nonwastewaters that are residues from RMERC.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	K071 (Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.) nonwastewaters that are not residues from RMERC.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
	All K071 wastewaters.	Mercury	7439-97-6	0.15	NA
K073	Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production.	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Hexachloroethane	67-72-1	0.055	30
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
K083	Distillation bottoms from aniline production.	Aniline	62-53-3	0.81	14
		Benzene	71-43-2	0.14	10
		Cyclohexanone	108-94-1	0.36	NA
		Diphenylamine (difficult to distinguish from diphenylnitrosamine)	22-39-4	0.92	13
		Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86-30-6	0.92	13
		Nitrobenzene	98-95-3	0.068	14
		Phenol	108-95-2	0.039	6.2
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
K084	Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
K085	Distillation or fractionation column bottoms from the production of chlorobenzenes.	Benzene	71-43-2	0.14	10

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Chlorobenzene	108-90-7	0.057	6.0
		m-Dichlorobenzene	541-73-1	0.036	6.0
		o-Dichlorobenzene	95-50-1	0.088	6.0
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Total PCBs (sum of all PCB isomers, or all Aroclors)	1336-36-3	0.10	10
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
K086	Solvent wastes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.	Acetone	67-64-1	0.28	160
		Acetophenone	98-86-2	0.010	9.7
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		n-Butyl alcohol	71-36-3	5.6	2.6
		Butylbenzyl phthalate	85-68-7	0.017	28
		Cyclohexanone	108-94-1	0.36	NA
		o-Dichlorobenzene	95-50-1	0.088	6.0
		Diethyl phthalate	84-66-2	0.20	28
		Dimethyl phthalate	131-11-3	0.047	28
		Di-n-butyl phthalate	84-74-2	0.057	28
		Di-n-octyl phthalate	117-84-0	0.017	28
		Ethyl acetate	141-78-6	0.34	33
		Ethylbenzene	100-41-4	0.057	10
		Methanol	67-56-1	5.6	NA
		Methyl ethyl ketone	78-93-3	0.28	36
		Methyl isobutyl ketone	108-10-1	0.14	33
		Methylene chloride	75-09-2	0.089	30
		Naphthalene	91-20-3	0.059	5.6
		Nitrobenzene	98-95-3	0.068	14

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Toluene	108-88-3	0.080	10
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Lead	7439-92-1	0.69	0.37 mg/l TCL
K087	Decanter tank tar sludge from coking operations.	Acenaphthylene	208-96-8	0.059	3.4
		Benzene	71-43-2	0.14	10
		Chrysene	218-01-9	0.059	3.4
		Fluoranthene	206-44-0	0.068	3.4
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K093	Distillation light ends from the production of phthalic anhydride from ortho-xylene.	Phthalic anhydride (measured as Phthalic acid)	100-21-0	0.055	28
		Phthalic anhydride	85-44-9	0.055	28
K094	Distillation bottoms from the production of phthalic anhydride from ortho-xylene.	Phthalic anhydride (measured as Phthalic acid)	100-21-0	0.055	28
		Phthalic anhydride	85-44-9	0.055	28
K095	Distillation bottoms from the production of 1,1,1-trichloroethane.	Hexachloroethane	67-72-1	0.055	30
		Pentachloroethane	76-01-7	0.055	6.0
		1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
		1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
K096	Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane.	m-Dichlorobenzene	541-73-1	0.036	6.0
		Pentachloroethane	76-01-7	0.055	6.0
		1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
		1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
K097	Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.	Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
		Heptachlor	76-44-8	0.0012	0.066
		Heptachlor epoxide	1024-57-3	0.016	0.066
		Hexachlorocyclopentadiene	77-47-4	0.057	2.4
K098	Untreated process wastewater from the production of toxaphene.	Toxaphene	8001-35-2	0.0095	2.6
K099	Untreated wastewater from the production of 2,4-D.	2,4-Dichlorophenoxyacetic acid	94-75-7	0.72	10
		HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.	Cadmium	7440-43-9	0.69	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K101	Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	o-Nitroaniline	88-74-4	0.27	14
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Cadmium	7440-43-9	0.69	NA

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[3] unless noted as "mg/l TCLP", or Technology Code
		Lead	7439-92-1	0.69	NA
		Mercury	7439-97-6	0.15	NA
K102	Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	o-Nitrophenol	88-75-5	0.028	13
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Cadmium	7440-43-9	0.69	NA
		Lead	7439-92-1	0.69	NA
		Mercury	7439-97-6	0.15	NA
K103	Process residues from aniline extraction from the production of aniline.	Aniline	62-53-3	0.81	14
		Benzene	71-43-2	0.14	10
		2,4-Dinitrophenol	51-28-5	0.12	160
		Nitrobenzene	98-95-3	0.068	14
		Phenol	108-95-2	0.039	6.2
K104	Combined wastewater streams generated from nitrobenzene/ aniline production.	Aniline	62-53-3	0.81	14
		Benzene	71-43-2	0.14	10
		2,4-Dinitrophenol	51-28-5	0.12	160
		Nitrobenzene	98-95-3	0.068	14
		Phenol	108-95-2	0.039	6.2
		Cyanides (Total)[7]	57-12-5	1.2	590
K105	Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.	Benzene	71-43-2	0.14	10
		Chlorobenzene	108-90-7	0.057	6.0
		2-Chlorophenol	95-57-8	0.044	5.7
		o-Dichlorobenzene	95-50-1	0.088	6.0
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Phenol	108-95-2	0.039	6.2
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
K106	K106 (wastewater treatment sludge from the mercury cell process in chlorine production) nonwastewaters that contain greater than or equal to 260 mg/kg total mercury.	Mercury	7439-97-6	NA	RMERC

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
	K106 (wastewater treatment sludge from the mercury cell process in chlorine production) nonwastewaters that contain less than 260 mg/kg total mercury that are residues from RMERC.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	Other K106 nonwastewaters that contain less than 260 mg/kg total mercury and are not residues from RMERC.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
	All K106 wastewaters.	Mercury	7439-97-6	0.15	NA
K107	Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	INCIN; or CHOXD fb CARBN; or BIODG fb CARBN	INCIN
K108	Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	INCIN; or CHOXD fb CARBN; or BIODG fb CARBN	INCIN
K109	Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	INCIN; or CHOXD fb CARBN; or BIODG fb CARBN	INCIN
K110	Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	INCIN; or CHOXD fb CARBN; or BOIDG fb CARBN	INCIN
K111	Product washwaters from the production of dinitrotoluene via nitration of toluene	2,4-Dinitrotoluene	121-1-2	0.32	140
		2,6-Dinitrotoluene	606-20-2	0.55	28
K112	Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.	NA	NA	INCIN; or CHOXD fb CARBN; or BIODG fb CARBN	INCIN
K113	Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	NA	NA	CARBN; OR INCIN	CMBST
K114	Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotolune.	NA	NA	CARBN; or INCIN	CMBST
K115	Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		NA	NA	CARBN; or INCIN	CMBST
K116	Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine.	NA	NA	CARBN; or INCIN	CMBST
K117	Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene.	Methyl bromide (Brpmomethane)	74-83-9	0.11	15
		Chloroform	67-66-3	0.046	6.0
		Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15
K118	Spent absorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	Methyl bromide (Bromomethane)	74-83-9	0.11	15
		Chloroform	67-66-3	0.046	6.0
		Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
K123	Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salts.	NA	NA	INCIN; or CHOXD fb (BIODG or CARBN)	INCIN
K124	Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.	NA	NA	INCIN; or CHOXD fb (BIODG or CARBN)	INCIN
K125	Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts.	NA	NA	INCIN; or CHOXD fb (BIODG or CARBN)	INCIN
K126	Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts.	NA	NA	INCIN; or CHOXD fb (BIODG or CARBN)	INCIN
K131	Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide.	Methyl bromide (Bromomethane)	74-83-9	0.11	15
K132	Spent absorbent and wastewater separator solids from the production of methyl bromide.	Methyl bromide (Bromomethane)	74-83-9	0.11	15
K136	Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	Methyl bromide (Bromomethane)	74-83-9	0.11	15
		Chloroform	67-66-3	0.046	6.0
		Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15
K141	Process residues from the recovery of coal tar, including, but not limited to, collecting sump residues from the production of coke or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludge from coking operations).	Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-2-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
K142	Tar storage tank residues from the production of coke from coal or from the recovery of coke by-products produced from coal.	Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4

Waste Code	Waste Description and Treatment Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
K143	Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke by-products produced from coal.	Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)flouranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
K144	Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke by-products produced from coal.	Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
K145	Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal.	Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Naphthalene	91-20-3	0.059	5.6
K147	Tar storage tank residues from coal tar refining.	Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
K148	Residues from coal tar distillation, including, but not limited to, still bottoms.	Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
K149	Distillation bottoms from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. (This waste does not include still bottoms from the distillations of benzyl chloride.)	Chlorobenzene	108-90-7	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Chloromethane	74-87-3	0.19	30
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		Toluene	108-88-3	0.080	10
K150	Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Chloromethane	74-87-3	0.19	30
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		1,1,2,2-Tetrachloroethane	79-34-5	0.057	6.0

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
K151	Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.	Benzene	71-43-2	0.14	10
		Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		Tetrachloroethylene	127-18-4	0.056	6.0
		Toluene	108-88-3	0.080	10
P001	Warfarin, & salts, when present at concentrations greater than 0.3%	Warfarin	81-81-2	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
P002	1-Acetyl-2-thiourea	1-Acetyl-2-thiourea	591-08-2	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P003	Acrolein	Acrolein	107-02-8	0.29	CMBST
P004	Aldrin	Aldrin	309-00-2	0.021	0.066
P005	Allyl alcohol	Allyl alcohol	107-18-6	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
P006	Aluminum phosphide	Aluminum phosphide	20859-73-8	CHOXD; CHRED; or INCIN	CHOXD; CHRED; or INCIN
P007	5-Aminomethyl 3-isoxazolol	5-Aminomethyl 3-isoxazolol	2763-96-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P008	4-Aminopyridine	4-Aminopyridine	504-24-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P009	Ammonium picrate	Ammonium picrate	131-74-8	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST
P010	Arsenic acid	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
P011	Arsenic pentoxide	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
P012	Arsenic trioxide	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
P013	Barium cyanide	Barium	7440-39-3	NA	7.6 mg/l TCLP
		Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
P014	Thiophenol (Benzene thiol)	Thiophenol (Benzene thiol)	108-98-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P015	Beryllium dust	Beryllium	7440-41-7	RMETL; or RTHRM	RMETL; or RTHRM
P016	Dichloromethyl ether (Bis(chloromethyl)ether)	Dichloromethyl ether	542-88-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P017	Bromoacetone	Bromoacetone	598-31-2	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P018	Brucine	Brucine	357-57-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P020	2-sec-Butyl-4,6-dinitrophenol (Dinoseb)	2-sec-Butyl-4,6-dinitrophenol (Dinoseb)	88-85-7	0.066	2.5
P021	Calcium cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P022	Carbon disulfide	Carbon disulfide	75-15-0	3.8	INCIN
		Carbon disulfide; alternate[6] standard for nonwastewaters[7] only	75-15-0	NA	4.8 mg/l TCLP
P023	Chloroacetaldehyde	Chloroacetaldehyde	107-20-0	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P024	p-Chloroaniline	p-Chloroaniline	106-47-8	0.46	16
P026	1-(o-Chlorophenyl)thiourea	1-(o-Chlorophenyl)thiourea	5344-82-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P027	3-Chloropropionitrile	3-Chloropropionitrile	542-76-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P028	Benzyl chloride	Benzyl chloride	100-44-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P029	Copper cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P030	Cyanides (soluble salts and complexes)	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P031	Cyanogen	Cyanogen	460-19-5	CHOXD; WETOX; or INCIN	CHOXD; WETOX; or INCIN
P033	Cyanogen chloride	Cyanogen chloride	506-77-4	CHOXD; WETOX; or INCIN	CHOXD; WETOX; or INCIN
P034	2-Cyclohexyl-4,6-dinitrophenol	2-Cyclohexyl-4,6-dinitrophenol	131-89-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P036	Dichlorophenylarsine	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in µg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
P037	Dieldrin	Dieldrin	60-57-1	0.017	0.13
P038	Diethylarsine	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
P039	Disulfoton	Disulfoton	298-04-4	0.017	6.2
P040	0,0-Diethyl O-pyrazinyl phosphorothioate	0,0-Diethyl O-pyrazinyl phosphorothioate	297-97-2	CARBN; or INCIN	CMBST
P041	Diethyl-p-nitrophenyl phosphate	Diethyl-p-nitrophenyl phosphate	311-45-5	CARBN; or INCIN	CMBST
P042	Epinephrine	Epinephrine	51-43-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P043	Diisopropylfluorophosphate (DFP)	Diisopropylfluorophosphate (DFP)	55-91-4	CARBN; or INCIN	CMBST
P044	Dimethoate	Dimethoate	60-51-5	CARBN; or INCIN	CMBST
P045	Thiofanox	Thiofanox	39196-18-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P046	alpha, alpha-Dimethylphenethylamine	alpha, alpha-Dimethylphenethylamine	122-09-8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P047	4,6-Dinitro-o-cresol	4,6-Dinitro-o-cresol	543-52-1	0.28	160
	4,6-Dinitro-o-cresol salts	NA	NA	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P048	2,4-Dinitrophenol	2,4-Dinitrophenol	51-28-5	0.12	160
P049	Dithiobiuret	Dithiobiuret	541-53-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P050	Endosulfan	Endosulfan I	939-98-8	0.023	0.066
		Endosulfan II	33213-6-5	0.029	0.13
		Endosulfan sulfate	1031-07-8	0.029	0.13
P051	Endrin	Endrin	72-20-8	0.0028	0.13
		Endrin aldehyde	7421-93-4	0.025	0.13
P054	Aziridine	Aziridine	151-56-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P056	Fluorine	Fluoride (measured in wastewaters only)	16964-48-8	35	ADGAS fb NEUTR
P057	Fluoroacetamide	Fluoroacetamide	640-19-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P058	Fluoroacetic acid, sodium salt	Fluoroacetic acid, sodium salt	62-74-8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P059	Heptachlor	Heptachlor	76-44-8	0.0012	0.066

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
		Heptachlor epoxide	1024-57-3	0.016	0.066
P060	Isodrin	Isodrin	465-73-6	0.021	0.066
P062	Hexaethyl tetraphosphate.	Hexaethyl tetraphosphate	757-58-4	CARBN; or INCIN	CMBST
P063	Hydrogen cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P064	Isocyanic acid, ethyl ester	Isocyanic acid, ethyl ester	624-83-9	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P065	P065 (mercury fulminate) nonwastewaters, regardless of their total mercury content, that are not incinerator residues or are not residues from RMERC.	Mercury	7439-97-6	NA	IMERC
	P065 (mercury fulminate) nonwastewaters that are either incinerator residues or are residues from RMERC; and contain greater than or equal to 260 mg/kg total mercury.	Mercury	7339-97-6	NA	RMERC
	P065 (mercury fulminate) nonwastewaters that are residues from RMERC and contain less than 260 mg/kg total mercury.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	P065 (mercury fulminate) nonwastewaters that are incinerator residues and contain less than 260 mg/kg total mercury.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
	All P065 (mercury fulminate) wastewaters.	Mercury	7439-97-6	0.15	NA
P066	Methomyl	Methomyl	16752-77-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P067	2-Methyl-aziridine	2-Methyl-aziridine	75-55-8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P068	Methyl hydrazine	Methyl hydrazine	60-34-4	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED, or CMBST
P069	2-Methyllactonitrile	2-Methyllactonitrile	75-86-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P070	Aldicarb	Aldicarb	116-06-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P071	Methyl parathion	Methyl parathion	298-00-0	0.014	4.6
P072	1-Naphthyl-2-thiourea	1-Naphthyl-2-thiourea	86-88-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P073	Nickel carbonyl	Nickel	7440-02-0	3.98	5.0 mg/l TCLP
P074	Nickel cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
P075	Nicotine and salts	Nicotine and salts	54-11-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P076	Nitric oxide	Nitric oxide	10102-43-9	ADGAS	ADGAS
P077	p-Nitroaniline	p-Nitroaniline	100-01-6	0.028	28
P078	Nitrogen dioxide	Nitrogen dioxide	10102-44-0	ADGAS	ADGAS
P081	Nitroglycerin	Nitroglycerin	55-63-0	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST
P082	N-Nitrosodimethylamine	N-Nitrosodimethylamine	62-75-9	0.40	2.3
P084	N-Nitrosomethylvinylamine	N-Nitrosomethylvinylamine	4549-40-0	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P085	Octamethylpyrophosphoramide	Octamethylpyrophosphoramide	152-16-9	CARBN; or INCIN	CMBST
P087	Osmium tetroxide	Osmium tetroxide	20816-12-0	RMETL; or RTHRM	RMETL; or RTHRM
P088	Endothall	Endothall	145-73-3	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
P089	Parathion	Parathion	56-38-2	0.014	4.6
P092	P092 (phenyl mercuric acetate) nonwastewaters, regardless of their total mercury content, that are not incinerator residues or are not residues from RMERC.	Mercury	7439-97-6	NA	IMERC; or RMERC
	P092 (phenyl mercuric acetate) nonwastewaters that are either incinerator residues or are residues from RMERC; and still contain greater than or equal to 260 mg/kg total mercury.	Mercury	7439-97-6	NA	RMERC
	P092 (phenyl mercuric acetate) nonwastewaters that are residues from RMERC and contain less than 260 mg/kg total mercury.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	P092 (phenyl mercuric acetate) nonwastewaters that are incinerator residues and contain less than 260 mg/kg total mercury.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
	All P092 (phenyl mercuric acetate) wastewaters.	Mercury	7439-97-6	0.15	NA
P093	Phenylthiourea	Phenylthiourea	103-85-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P094	Phorate	Phorate	298-02-2	0.021	4.6
P095	Phosgene	Phosgene	75-44-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P096	Phosphine	Phosphine	7803-51-2	CHOXD; CHRED; or INCIN	CHOXD; CHRED; or INCIN
P097	Famphur	Famphur	52-85-7	0.017	15
P098	Potassium cyanide.	Cyanides (Total)[7]	57-12-5	1.2	590

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP" or Technology Code
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P099	Potassium silver cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Silver	7440-22-4	0.43	0.30 mg/l TCLP
P101	Ethyl cyanide (Propanenitrile)	Ethyl cyanide (Propanenitrile)	107-12-0	0.24	360
P102	Propargyl alcohol	Propargyl alcohol	107-19-7	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
P103	Selenourea	Selenium	7782-49-2	0.82	0.16 mg/l TCLP
P104	Silver cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
		Silver	7440-22-4	0.43	0.30 mg/l TCLP
P105	Sodium azide	Sodium azide	26628-22-8	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST
P106	Sodium cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P108	Strychnine and salts	Strychnine and salts	57-24-9	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P109	Tetraethyldithiopyrophosphate	Tetraethyldithiopyrophosphate	3689-24-5	CARBN; or INCIN	CMBST
P110	Tetraethyl lead	Lead	7439-92-1	0.69	0.37 mg/l TCLP
P111	Tetraethylpyrophosphate	Tetraethylpyrophosphate	107-49-3	CARBN; or INCIN	CMBST
P112	Tetranitromethane	Tetranitromethane	509-14-8	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST
P113	Thallic oxide	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
P114	Thallium selenite	Selenium	7782-49-2	0.82	0.16 mg/l TCLP
P115	Thallium (I) sulfate	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
P116	Thiosemicarbazide	Thiosemicarbazide	79-19-6	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P118	Trichloromethanethiol	Trichloromethanethiol	75-70-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
P119	Ammonium vanadate	Vanadium (measured in wastewaters only)	7440-62-2	4.3	STABL
P120	Vanadium pentoxide	Vanadium (measured in wastewaters only)	7440-62-2	4.3	STABL

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
P121	Zinc cyanide	Cyanides (Total)[7]	57-12-5	1.2	590
		Cyanides (Amenable)[7]	57-12-5	0.86	30
P122	Zinc phosphide Zn_3P_2, when present at concentrations greater than 10%	Zinc Phosphide	1314-84-7	CHOXD; CHRED; or INCIN	CHOXD; CHRED; or INCIN
P123	Toxaphene	Toxaphene	8001-35-2	0.0095	2.6
U001	Acetaldehyde	Acetaldehyde	75-07-0	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U002	Acetone	Acetone	67-64-1	0.28	160
U003	Acetonitrile	Acetonitrile	75-05-8	5.6	INCIN
		Acetonitrile; alternate[6] standard for nonwastewaters only	75-05-8	NA	1.8
U004	Acetophenone	Acetophenone	98-86-2	0.010	9.7
U005	2-Acetylaminofluorene	2-Acetylaminofluorene	53-96-3	0.059	140
U006	Acetyl chloride	Acetyl Chloride	75-36-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U007	Acrylamide	Acrylamide	79-06-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U008	Acrylic acid	Acrylic acid	79-10-7	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U009	Acrylonitrile	Acrylonitrile	107-13-1	0.24	84
U010	Mitomycin C	Mitomycin C	50-07-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U011	Amitrole	Amitrole	61-82-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U012	Aniline	Aniline	62-53-3	0.81	14
U014	Auramine	Auramine	492-80-8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U015	Azaserine	Azaserine	115-02-6	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U016	Benz(c)acridine	Benz(c)acridine	225-51-4	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U017	Benzal chloride	Benzal chloride	98-87-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U018	Benz(a)anthracene	Benz(a)anthracene	56-55-3	0.059	3.4
U019	Benzene	Benzene	71-43-2	0.14	10

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
U020	Benzenesulfonyl chloride	Benzenesulfonyl chloride	98-09-9	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U021	Benzidine	Benzidine	92-87-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U022	Benzo(a)pyrene	Benzo(a)pyrene	50-32-8	0.061	3.4
U023	Benzotrichloride	Benzotrichloride	98-07-7	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST
U024	bis(2-Chloroethoxy)methane	bis(2-Chloroethoxy)methane	111-91-1	0.036	7.2
U025	bis(2-Chloroethyl)ether	bis(2-Chloroethyl)ether	111-44-4	0.033	6.0
U026	Chlornaphazine	Chlornaphazine	494-03-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U027	bis(2-Chloroisopropyl)ether	bis(2-Chloroisopropyl)ether	108-60-1	0.055	7.2
U028	bis(2-Ethylhexyl) phthalate	bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
U029	Methyl bromide (Bromomethane)	Methyl bromide (Bromomethane)	74-83-9	0.11	15
U030	4-Bromophenyl phenyl ether	4-Bromophenyl phenyl ether	101-55-3	0.055	15
U031	n-Butyl alcohol	n-Butyl alcohol	71-36-3	5.6	2.6
U032	Calcium chromate	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
U033	Carbon oxyfluoride	Carbon oxyfluoride	353-50-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U034	Trichloroacetaldehyde (Chloral)	Trichloroacetaldehyde (Chloral)	75-87-6	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U035	Chlorambucil	Chlorambucil	305-03-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U036	Chlordane	Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
U037	Chlorobenzene	Chlorobenzene	108-90-7	0.057	6.0
U038	Chlorobenzilate	Chlorobenzilate	510-15-6	0.10	INCIN
U039	p-Chloro-m-cresol	p-Chloro-m-cresol	59-50-7	0.018	14
U041	Epichlorohydrin (1-Chloro-2,3-epoxypropane)	Epichlorohydrin (1-Chloro-2,3-epoxypropane)	106-89-8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U042	2-Chloroethyl vinyl ether	2-Chloroethyl vinyl ether	110-75-8	0.062	INCIN
U043	Vinyl chloride	Vinyl chloride	75-01-4	0.27	6.0
U044	Chloroform	Chloroform	67-66-3	0.046	6.0

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
U045	Chloromethane (Methyl chloride)	Chloromethane (Methyl chloride)	74-87-3	0.19	30
U046	Chloromethyl methyl ether	Chloromethyl methyl ether	107-30-2	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U047	2-Chloronaphthalene	2-Chloronaphthalene	91-58-7	0.055	5.6
U048	2-Chlorophenol	2-Chlorophenol	95-57-8	0.044	5.7
U049	4-Chloro-o-toluidine hydrochloride	4-Chloro-o-toluidine hydrochloride	3165-93-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U050	Chrysene	Chrysene	218-01-9	0.059	3.4
U051	Creosote	Naphthalene	91-20-3	0.059	5.6
		Pentachlorophenol	87-86-5	0.089	7.4
		Phenanthrene	85-01-8	0.059	5.6
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
U052	Cresols (Cresylic acid)	o-Cresol	95-48-7	0.11	5.6
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		Cresol-mixed isomers (Cresylic acid) (sum of o-, m-, and p-cresol concentrations)	1319-77-3	0.88	11.2
U053	Crotonaldehyde	Crotonaldehyde	4170-30-3	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U055	Cumene	Cumene	98-82-8	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U056	Cyclohexane	Cyclohexane	110-82-7	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U057	Cyclohexanone	Cyclohexanone	108-94-1	0.36	CMBST
		Cyclohexanone; alternate[6] standard for nonwastewaters only	108-94-1	NA	0.75 mg/l TCLP
U058	Cyclophosphamide	Cyclophosphamide	50-18-0	CARBN; or INCIN	CMBST

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
U059	Daunomycin	Daunomycin	20830-81-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U060	DDD	o,p'-DDD	53-19-0	0.023	0.087
		p,p'-DDD	72-54-8	0.023	0.087
U061	DDT	o-p'-DDT	789-02-6	0.0039	0.087
		p,p'-DDT	50-29-3	0.0039	0.087
		o,p'-DDD	53-19-0	0.023	0.087
		p,p'-DDD	72-54-8	0.023	0.087
		o,p'-DDE	3424-82-6	0.031	0.087
		p,p'-DDE	72-55-9	0.031	0.087
U062	Diallate	Diallate	2303-16-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U063	Dibenz(a,h)anthracene	Dibenz(a,h)anthracene	53-70-3	0.055	8.2
U064	Dibenz(a,i)pyrene	Dibenz(a,i)pyrene	189-55-9	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U066	1,2-Dibromo-3-chloropropane	1,2-Dibromo-3-chloropropane	96-12-8	0.11	15
U067	Ethylene dibromide (1,2-Dibromoethane)	Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15
U068	Dibromomethane	Dibromomethane	74-95-3	0.11	15
U069	Di-n-butyl phthalate	Di-n-butyl phthalate	84-74-2	0.057	28
U070	o-Dichlorobenzene	o-Dichlorobenzene	95-50-1	0.088	6.0
U071	m-Dichlorobenzene	m-Dichlorobenzene	541-73-1	0.036	6.0
U072	p-Dichlorobenzene	p-Dichlorobenzene	106-46-7	0.090	6.0
U073	3,3'-Dichlorobenzidine	3,3'-Dichlorobenzidine	91-94-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U074	1,4-Dichloro-2-butene	cis-1,4-Dichloro-2-butene	1476-11-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
		trans-1,4-Dichloro-2-butene	764-41-0	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U075	Dichlorodifluoromethane	Dichlorodifluoromethane	75-71-8	0.23	7.2
U076	1,1-Dichloroethane	1,1-Dichloroethane	75-34-3	0.059	6.0
U077	1,2-Dichloroethane	1,2-Dichloroethane	107-06-2	0.21	6.0

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[3] unless noted as "mg/l TCLP"; or Technology Code
U078	1,1-Dichloroethylene	1,1-Dichloroethylene	75-35-4	0.025	6.0
U079	1,2-Dichloroethylene	trans-1,2-Dichloroethylene	156-60-5	0.054	30
U080	Methylene chloride	Methylene chloride	75-09-2	0.089	30
U081	2,4-Dichlorophenol	2,4-Dichlorophenol	120-83-2	0.044	14
U082	2,6-Dichlorophenol	2,6-Dichlorophenol	87-65-0	0.044	14
U083	1,2-Dichloropropane	1,2-Dichloropropane	78-87-5	0.85	18
U084	1,3-Dichloropropylene	cis-1,3-Dichloropropylene	10061-01-5	0.036	18
		trans-1,3-Dichloropropylene	10061-02-6	0.036	18
U085	1,2:3,4-Diepoxybutane	1,2:3,4-Diepoxybutane	1464-53-5	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U086	N,N'-Diethylhydrazine	N,N'-Diethylhydrazine	1615-80-1	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST
U087	O,O-Diethyl S-methyldithiophosphate	O,O-Diethyl S-methyldithiophosphate	3288-58-2	CARBN; or INCIN	CMBST
U088	Diethyl phthalate	Diethyl phthalate	84-66-2	0.20	28
U089	Diethyl stilbestrol	Diethyl stilbestrol	56-53-1	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U090	Dihydrosafrole	Dihydrosafrole	94-58-6	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U091	3,3'-Dimethoxybenzidine	3,3'-Dimethoxybenzidine	119-90-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U092	Dimethylamine	Dimethylamine	124-40-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U093	p-Dimethylaminoazobenzene	p-Dimethylaminoazobenzene	60-11-7	0.13	INCIN
U094	7,12-Dimethylbenz(a)anthracene	7,12-Dimethylbenz(a)anthracene	57-97-6	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U095	3,3'-Dimethylbenzidine	3,3'-Dimethylbenzidine	119-93-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U096	alpha, alpha-Dimethyl benzyl hydroperoxide	alpha, alpha-Dimethyl benzyl hydroperoxide	80-15-9	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST
U097	Dimethylcarbamoyl chloride	Dimethylcarbamoyl chloride	79-44-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U098	1,1-Dimethylhydrazine	1,1-Dimethylhydrazine	57-14-7	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
U099	1,2-Dimethylhydrazine	1,2-Dimethylhydrazine	540-73-8	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST
U101	2,4-Dimethylphenol	2,4-Dimethylphenol	105-67-9	0.036	14
U102	Dimethyl phthalate	Dimethyl phthalate	131-11-3	0.047	28
U103	Dimethyl sulfate	Dimethyl sulfate	77-78-1	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST
U105	2,4-Dinitrotoluene	2,4-Dinitrotoluene	121-14-2	0.32	140
U106	2,6-Dinitrotoluene	2,6-Dinitrotoluene	606-20-2	0.55	28
U107	Di-n-octyl phthalate	Di-n-octyl phthalate	117-84-0	0.017	28
U108	1,4-Dioxane	1,4-Dioxane	123-91-1	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
		1,4-Dioxane; alternate[6] standard for nonwastewaters only	123-91-1	NA	170
U109	1,2-Diphenylhydrazine	1,2-Diphenylhydrazine	122-66-7	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST
		1,2-Diphenylhydrazine; alternate[6] standard for wastewaters only	122-66-7	0.087	NA
U110	Dipropylamine	Dipropylamine	142-84-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U111	Di-n-propylnitrosamine	Di-n-propylnitrosamine	621-64-7	0.40	14
U112	Ethyl acetate	Ethyl acetate	141-78-6	0.34	33
U113	Ethyl acrylate	Ethyl acrylate	140-88-5	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U114	Ethylenebisdithiocarbamic acid salts and esters	Ethylenebisdithiocarbamic acid	111-54-6	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U115	Ethylene oxide	Ethylene oxide	75-21-8	(WETOX or CHOXD) fb CARBN; or INCIN	CHOXD; or INCIN
		Ethylene oxide; alternate[6] standard for wastewaters only	75-21-8	0.12	NA
U116	Ethylene thiourea	Ethylene thiourea	96-45-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U117	Ethyl ether	Ethyl ether	60-29-7	0.12	160
U118	Ethyl methacrylate	Ethyl methacrylate	97-63-2	0.14	160
U119	Ethyl methane sulfonate	Ethyl methane sulfonate	62-50-0	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
U120	Fluoranthene	Fluoranthene	206-44-0	0.068	3.4
U121	Trichloromonofluoromethane	Trichloromonofluoromethane	75-69-4	0.020	30
U122	Formaldehyde	Formaldehyde	50-00-0	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U123	Formic acid	Formic acid	64-18-6	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U124	Furan	Furan	110-00-9	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U125	Furfural	Furfural	98-01-1	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U126	Glycidylaldehyde	Glycidylaldehyde	765-34-4	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U127	Hexachlorobenzene	Hexachlorobenzene	118-74-1	0.055	10
U128	Hexachlorobutadiene	Hexachlorobutadiene	87-68-3	0.055	5.6
U129	Lindane	alpha-BHC	319-84-6	0.00014	0.066
		beta-BHC	319-85-7	0.00014	0.066
		delta-BHC	319-86-8	0.023	0.066
		gamma-BHC (Lindane)	58-89-9	0.0017	0.066
U130	Hexachlorocyclopentadiene	Hexachlorocyclopentadiene	77-47-4	0.057	2.4
U131	Hexachloroethane	Hexachloroethane	67-72-1	0.055	30
U132	Hexachlorophene	Hexachlorophene	70-30-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U133	Hydrazine	Hydrazine	302-01-2	CHOXD; CHRED; CARBN; DIODG; or INCIN	CHOXD; CHRED; or CMBST
U134	Hydrogen fluoride	Fluoride (measured in wastewaters only)	16964-48-8	35	ADGAS fb NEUTR; or NEUTR
U135	Hydrogen Sulfide	Hydrogen Sulfide	7783-06-4	CHOXD; CHRED, or INCIN	CHOXD; CHRED; or INCIN.
U136	Cacodylic acid	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
U137	Indeno(1,2,3-c,d)pyrene	Indeno(1,2,3-c,d)pyrene	193-39-5	0.0055	3.4
U138	Iodomethane	Iodomethane	74-88-4	0.19	65
U140	Isobutyl alcohol	Isobutyl alcohol	78-83-1	5.6	170
U141	Isosafrole	Isosafrole	120-58-1	0.081	2.6
U142	Kepone	Kepone	143-50-8	0.0011	0.13

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
U143	Lasiocarpine	Lasiocarpine	303-34-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U144	Lead acetate	Lead	7439-92-1	0.69	0.37 mg/l TCLP
U145	Lead phosphate	Lead	7439-92-1	0.69	0.37 mg/l TCLP
U146	Lead subacetate	Lead	7439-92-1	0.69	0.37 mg/l TCLP
U147	Maleic anhydride	Maleic anhydride	108-31-6	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U148	Maleic hydrazide	Maleic hydrazide	123-33-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U149	Malononitrile	Malononitrile	109-77-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U150	Melphalan	Melphalan	148-82-3	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U151	U151 (mercury) nonwastewaters that cont n greater than or equal to 260 mg/kg total mercury.	Mercury	7439-97-6	NA	RMERC
	U151 (mercury) nonwastewaters that contain less than 260 mg/kg total mercury and that are residues from RMERC only.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	U151 (mercury) nonwastewaters that contain less than 260 mg/kg total mercury and that are not residues from RMERC.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
	All U151 (mercury) wastewaters.	Mercury	7439-97-6	0.15	NA
	Elemental Mercury Contaminated with Radioactive Materials	Mercury	7439-97-6	NA	AMLGM
U152	Methacrylonitrile	Methacrylonitrile	126-98-7	0.24	84
U153	Methanethiol	Methanethiol	74-93-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U154	Methanol	Methanol	67-56-1	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
		Methanol; alternate[6] set of standards for both wastewaters and nonwastewaters	67-56-1	5.6	0.75 mg/l TCLP
U155	Methapyrilene	Methapyrilene	91-80-5	0.081	1.5
U156	Methyl chlorocarbonate	Methyl chlorocarbonate	79-22-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U157	3-Methylcholanthrene	3-Methylcholanthrene	56-49-5	0.0055	15
U158	4,4'-Methylene bis(2-chloroaniline)	4,4'-Methylene bis(2-chloroaniline)	101-14-4	0.50	30
U159	Methyl ethyl ketone	Methyl ethyl ketone	78-93-3	0.28	36

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
U160	Methyl ethyl ketone peroxide	Methyl ethyl ketone peroxide	1338-23-4	CHOXD; CHRED; CARBN; BIODG; or INCIN	CHOXD; CHRED; or CMBST
U161	Methyl isobutyl ketone	Methyl isobutyl ketone	108-10-1	0.14	33
U162	Methyl methacrylate	Methyl methacrylate	80-62-6	0.14	160
U163	N-Methyl N'-nitro N-nitrosoguanidine	N-Methyl N'-nitro N-nitrosoguanidine	70-25-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U164	Methylthiouracil	Methylthiouracil	56-04-2	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U165	Naphthalene	Naphthalene	91-20-3	0.059	5.6
U166	1,4-Naphthoquinone	1,4-Naphthoquinone	130-15-4	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U167	1-Naphthlyamine	1-Naphthlyamine	134-32-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U168	2-Naphthlyamine	2-Naphthlyamine	91-59-8	0.52	INCIN
U169	Nitrobenzene	Nitrobenzene	98-95-3	0.068	14
U170	p-Nitrophenol	p-Nitrophenol	100-02-7	0.12	29
U171	2-Nitropropane	2-Nitropropane	79-46-9	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U172	N-Nitrosodi-n-butylamine	N-Nitrosodi-n-butylamine	924-16-3	0.40	17
U173	N-Nitrosodiethanolamine	N-Nitrosodiethanolamine	1116-54-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U174	N-Nitrosodiethylamine	N-Nitrosodiethylamine	55-18-5	0.40	28
U176	N-Nitroso-N-ethylurea	N-Nitroso-N-ethylurea	759-73-9	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U177	N-Nitroso-N-methylurea	N-Nitroso-N-methylurea	684-93-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U178	N-Nitroso-N-methylurethane	N-Nitroso-N-methylurethane	615-53-2	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U179	N-Nitrosopiperidine	N-Nitrosopiperidine	100-75-4	0.013	35
U180	N-Nitrosopyrrolidine	N-Nitrosopyrrolidine	930-55-2	0.013	35
U181	5-Nitro-o-toluidine	5-Nitro-o-toluidine	99-55-8	0.32	28
U182	Paraldehyde	Paraldehyde	123-63-7	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U183	Pentachlorobenzene	Pentachlorobenzene	608-93-5	0.055	10

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
U184	Pentachloroethane	Pentachloroethane	76-01-7	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
		Pentachloroethane; alternate[6] standards for both wastewaters and nonwastewaters	76-01-7	0.055	6.0
U185	Pentachloronitrobenzene	Pentachloronitrobenzene	82-68-8	0.055	4.8
U186	1,3-Pentadiene	1,3-Pentadiene	504-60-9	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U187	Phenacetin	Phenacetin	62-44-2	0.081	16
U188	Phenol	Phenol	108-95-2	0.039	6.2
U189	Phosphorus sulfide	Phosphorus sulfide	1314-80-3	CHOXD; CHRED; or INCIN	CHOXD; CHRED; or INCIN
U190	Phthalic anhydride	Phthalic anhydride (measured as Phthalic acid)	100-21-0	0.055	28
		Phthalic anhydride	85-44-9	0.055	28
U191	2-Picoline	2-Picoline	109-06-8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U192	Pronamide	Pronamide	23950-58-5	0.093	1.5
U193	1,3-Propane sultone	1,3-Propane sultone	1120-71-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U194	n-Propylamine	n-Propylamine	107-10-8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U196	Pyridine	Pyridine	110-86-1	0.014	16
U197	p-Benzoquinone	p-Benzoquinone	106-51-4	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U200	Reserpine	Reserpine	50-55-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U201	Resorcinol	Resorcinol	108-46-3	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U202	Saccharin and salts	Saccharin	81-07-2	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U203	Safrole	Safrole	94-59-7	0.081	22
U204	Selenium dioxide	Selenium	7782-49-2	0.82	0.16 mg/l TCLP
U205	Selenium sulfide	Selenium	7782-49-2	0.82	0.16 mg/l TCLP
U206	Streptozotocin	Streptozotocin	18883-66-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
U207	1,2,4,5-Tetrachlorobenzene	1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
U208	1,1,1,2-Tetrachloroethane	1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
U209	1,1,2,2-Tetrachloroethane	1,1,2,2-Tetrachloroethane	79-34-5	0.057	6.0
U210	Tetrachloroethylene	Tetrachloroethylene	127-18-4	0.056	6.0
U211	Carbon tetrachloride	Carbon tetrachloride	56-23-5	0.057	6.0
U213	Tetrahydrofuran	Tetrahydrofuran	109-99-9	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U214	Thallium (I) acetate	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
U215	Thallium (I) carbonate	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
U216	Thallium (I) chloride	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
U217	Thallium (I) nitrate	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
U218	Thioacetamide	Thioacetamide	62-55-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U219	Thiourea	Thiourea	62-56-6	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U220	Toluene	Toluene	108-88-3	0.080	10
U221	Toluenediamine	Toluenediamine	25376-45-8	CARBN; or INCIN	CMBST
U222	o-Toluidine hydrochloride	o-Toluidine hydrochloride	636-21-5	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U223	Toluene diisocyanate	Toluene diisocyanate	26471-62-5	CARBN; or INCIN	CMBST
U225	Bromoform (Tribromomethane)	Bromoform (Tribromomethane)	75-25-2	0.63	15
U226	1,1,1-Trichloroethane	1,1,1-Trichloroethane	71-55-6	0.054	6.0
U227	1,1,2-Trichloroethane	1,1,2-Trichloroethane	79-00-5	0.054	6.0
U228	Trichloroethylene	Trichloroethylene	79-01-6	0.054	6.0
U234	1,3,5-Trinitrobenzene	1,3,5-Trinitrobenzene	99-35-4	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U235	tris-(2,3-Dibromopropyl)-phosphate	tris-(2,3-Dibromopropyl)-phosphate	126-72-7	0.11	0.10
U236	Trypan Blue	Trypan Blue	72-57-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U237	Uracil mustard	Uracil mustard	66-75-1	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory[1]	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS[2] Number	Concentration in mg/l[3]; or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or Technology Code
U238	Urethane (Ethyl carbamate)	Urethane (Ethyl carbamate)	51-79-6	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U239	Xylenes	Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
U240	2,4-D (2,4-Dichlorophenoxyacetic acid)	2,4-D (2,4-Dichlorophenoxyacetic acid)	94-75-7	0.72	10
	2,4-D (2,4-Dichlorophenoxyacetic acid) salts and esters		NA	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U243	Hexachloropropylene	Hexachloropropylene	1888-71-7	0.035	30
U244	Thiram	Thiram	137-26-8	(WETOX or CHOXD) fb CARBN; or INCIN	INCIN
U246	Cyanogen bromide	Cyanogen bromide	506-68-3	CHOXD; WETOX; or INCIN	CHOXD; WETOX; or INCIN
U247	Methoxychlor	Methoxychlor	72-43-5	0.25	0.18
U248	Warfarin, & salts, when present at concentrations of 0.3% or less	Warfarin	81-81-2	(WETOX or CHOXD) fb CARBN; or INCIN	CMBST
U249	Zinc phosphide, Zn_3P_2, when present at concentrations of 10% or less	Zinc Phosphide	1314-84-7	CHOXD; CHRED; or INCIN	CHOXD; CHRED; or INCIN
U328	o-Toluidine	o-Toluidine	95-53-4	INCIN; or CHOXD fb (BIODG or CARBN); or BIODG fb CARBN.	INCIN; or Thermal Destruction
U353	p-Toluidine	p-Toluidine	106-49-0	INCIN; or CHOXD fb (BIODG or CARBN); or BIODG fb CARBN	INCIN; or Thermal Destruction
U359	2-Ethoxyethanol	2-Ethoxyethanol	110-80-5	INCIN; or CHOXD fb (BIODG or CARBN); or BIODG fb CARBN	CMBST

1 The waste descriptions provided in this table do not replace waste descriptions in 40 CFR part 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

2 CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with it's salts and/or esters, the CAS number is given for the parent compound only.

3 Concentration standards for wastewaters are expressed in mg/l are based on analysis of composite samples.

4 All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42, Table 1 - Technology Codes and Descriptions of Technology-Based Standards.

5 Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O or 40 CFR part 265, subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

6 Where an alternate treatment standard or set of alternate standards has been indicated, a facility may comply with this alternate standard, but only for the Treatment/Regulatory Subcategory or physical form (i.e., wastewater and/or nonwastewater) specified for that alternate standard.

7 Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

NOTE: NA means not applicable.

25. Section 268.41 is revised to read as follows:

§ 268.41 Treatment standards expressed as concentrations in waste extract.

For the requirements previously found in this section and for treatment standards in Table CCWE—Constituent Concentrations in Waste Extracts, refer to § 268.40.

26. Section 268.42 is amended by removing Table 2 and Table 3; revising paragraphs (a) introductory text, (c)(2), and (d); adding a note before paragraph (a); and adding the entry "CMBST" into Table 1.—Technology Codes and Description of Technology-Based Standards in alphabetical order, to read as follows:

§ 268.42 Treatment standards expressed as specified technologies.

Note: For the requirements previously found in this section in Table 2—Technology-Based Standards By RCRA Waste Code, and Table 3—Technology-Based Standards for Specific Radioactive Hazardous Mixed Waste, refer to § 268.40.

(a) The following wastes in paragraphs (a)(1) and (a)(2) of this section and in the table in § 268.40 "Treatment Standards for Hazardous Wastes," for which standards are expressed as a treatment method rather than a concentration level, must be treated using the technology or technologies specified in paragraphs (a)(1) and (a)(2) and Table 1 of this section.

* * * * *

TABLE 1.—Technology Codes and Description of Technology-Based Standards

Technology code	Description of technology-based standards
* * * * *	
CMBST	Combustion in incinerators, boilers, or industrial furnaces operated in accordance with the applicable requirements of 40 CFR part 264, subpart O, or 40 CFR part 266, subpart H.
* * * * *	

* * * * *

(c) * * *

(2) The lab pack does not contain any of the wastes listed in Appendix IV to part 268.

* * * * *

(d) Radioactive hazardous mixed wastes are subject to the treatment standards in § 268.40. Where treatment standards are specified for radioactive mixed wastes in the Table of Treatment Standards, those treatment standards will govern. Where there is no specific treatment standard for radioactive mixed waste, the treatment standard for the hazardous waste (as designated by EPA waste code) applies. Hazardous debris containing radioactive waste is subject to the treatment standards specified in § 268.45.

28. Section 268.43 is revised to read as follows:

§ 268.43 Treatment standards expressed as waste concentrations.

For the requirements previously found in this section and for treatment standards in Table CCW—Constituent Concentrations in Wastes, refer to § 268.40.

29. Section 268.45(b)(2) is revised to read as follows:

§ 268.45 Treatment standards for hazardous debris.

* * * * *

(b) * * *

(2) Debris contaminated with listed waste. The contaminants subject to treatment for debris that is contaminated with a prohibited listed hazardous waste are those constituents or wastes for which treatment standards are established for the waste under § 268.40.

30. Section 268.46 is revised to read as follows:

§ 268.46 Alternative treatment standards based on HTMR.

For the treatment standards previously found in this section, refer to § 268.40.

31. In Subpart D, § 268.48 is added to read as follows:

§ 268.48 Universal Treatment Standards

(a) Table UTS identifies the hazardous constituents, along with the nonwastewater and wastewater treatment standard levels, that are used to regulate most prohibited hazardous wastes with numerical limits. For determining compliance with treatment standards for underlying hazardous constituents as defined in § 268.2(i), these treatment standards may not be exceeded. Compliance with these treatment standards is measured by an analysis of grab samples, unless otherwise noted in the following Table UTS.

§ 268.48 TABLE UTS—UNIVERSAL TREATMENT STANDARDS

Regulated constituent—common name	CAS [1] No.	Wastewater standard. Concentration in mg/[2]	Nonwastewater standard. Concentration in mg/kg[3] unless noted as "mg/l TCLP"
Acenaphthylene	208–96–8	0.059	3.4
Acenaphthene	83–32–9	0.059	3.4
Acetone	67–64–1	0.28	160
Acetonitrile	75–05–8	5.6	1.8
Acetophenone	96–86–2	0.010	9.7
2-Acetylaminofluorene	53–96–3	0.059	140
Acrolein	107–02–8	0.29	NA
Acrylamide	79–06–1	19	23
Acrylonitrile	107–13–1	0.24	84
Aldrin	309–00–2	0.021	0.066
4-Aminobiphenyl	92–67–1	0.13	NA
Aniline	62–53–3	0.81	14
Anthracene	120–12–7	0.059	3.4
Aramite	140–57–8	0.36	NA
alpha-BHC	319–84–6	0.00014	0.066
beta-BHC	319–85–7	0.00014	0.066
delta-BHC	319–86–8	0.023	0.066
gamma-BHC	58–89–9	0.0017	0.066
Benzene	71–43–2	0.14	10

§ 268.48 TABLE UTS—UNIVERSAL TREATMENT STANDARDS—Continued

Regulated constituent—common name	CAS [1] No.	Wastewater standard. Concentration in mg/[2]	Nonwastewater standard. Concentration in mg/kg [3] unless noted as "mg/l TCLP"
Benz(a)anthracene	56–55–3	0.059	3.4
Benzal chloride	98–87–3	0.055	6.0
Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205–99–2	0.11	6.8
Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207–08–9	0.11	6.8
Benzo(g,h,i)perylene	191–24–2	0.0055	1.8
Benzo(a)pyrene	50–32–8	0.061	3.4
Bromodichloromethane	75–27–4	0.35	15
Methyl bromide (Bromomethane)	74–83–9	0.11	15
4-Bromophenyl phenyl ether	101–55–3	0.055	15
n-Butyl alcohol	71–36–3	5.6	2.6
Butyl benzyl phthalate	85–68–7	0.017	28
2-sec-Butyl-4,6-dinitrophenol (Dinoseb)	88–85–7	0.066	2.5
Carbon disulfide	75–15–0	3.8	4.8 mg/l TCLP
Carbon tetrachloride	56–23–5	0.057	6.0
Chlordane (alpha and gamma isomers)	57–74–9	0.0033	0.26
p-Chloroaniline	106–47–8	0.46	16
Chlorobenzene	108–90–7	0.057	6.0
Chlorobenzilate	510–15–6	0.10	NA
2-Chloro-1,3-butadiene	126–99–8	0.057	0.28
Chlorodibromomethane	124–48–1	0.057	15
Chloroethane	75–00–3	0.27	6.0
bis(2-Chloroethoxy)methane	111–91–1	0.036	7.2
bis(2-Chloroethyl)ether	111–44–4	0.033	6.0
Chloroform	67–66–3	0.046	6.0
bis(2-Chloroisopropyl)ether	108–60–1	0.055	7.2
p-Chloro-m-cresol	59–50–7	0.018	14
2-Chloroethyl vinyl ether	110–75–8	0.062	NA
Chloromethane (Methyl chloride)	74–87–3	0.19	30
2-Chloronaphthalene	91–58–7	0.055	5.6
2-Chlorophenol	95–57–8	0.044	5.7
3-Chloropropylene	107–05–1	0.036	30
Chrysene	218–01–9	0.059	3.4
o-Cresol	95–48–7	0.11	5.6
m-Cresol (difficult to distinguish from p-cresol)	108–39–4	0.77	5.6
p-Cresol (difficult to distinguish from m-cresol)	106–44–5	0.77	5.6
Cyclohexanone	108–94–1	0.36	0.75 mg/l TCLP
1,2-Dibromo-3-chloropropane	96–12–8	0.11	15
Ethylene dibromide (1,2-Dibromoethane)	106–93–4	0.028	15
Dibromomethane	74–95–3	0.11	15
2,4-D (2,4-Dichlorophenoxyacetic acid)	94–75–7	0.72	10
o,p'-DDD	53–19–0	0.023	0.087
p,p'-DDD	72–54–8	0.023	0.087
o,p'-DDE	3424–82–6	0.031	0.087
p,p'-DDE	72–55–9	0.031	0.087
o,p'-DDT	789–02–6	0.0039	0.087
p,p'-DDT	50–29–3	0.0039	0.087
Dibenz(a,h)anthracene	53–70–3	0.055	8.2
Dibenz(a,e)pyrene	192–65–4	0.061	NA
m-Dichlorobenzene	541–73–1	0.036	6.0
o-Dichlorobenzene	95–50–1	0.088	6.0
p-Dichlorobenzene	106–46–7	0.090	6.0
Dichlorodifluoromethane	75–71–8	0.23	7.2
1,1-Dichloroethane	75–34–3	0.059	6.0
1,2-Dichloroethane	107–06–2	0.21	6.0
1,1-Dichloroethylene	75–35–4	0.025	6.0
trans-1,2-Dichloroethylene	156–60–5	0.054	30
2,4-Dichlorophenol	120–83–2	0.044	14
2,6-Dichlorophenol	87–65–0	0.044	14
1,2-Dichloropropane	78–87–5	0.85	18
cis-1,3-Dichloropropylene	10061–01–5	0.036	18
trans-1,3-Dichloropropylene	10061–02–6	0.036	18
Dieldrin	60–57–1	0.017	0.13
Diethyl phthalate	84–66–2	0.20	28
2-4-Dimethyl phenol	105–67–9	0.036	14
Dimethyl phthalate	131–11–3	0.047	28
Di-n-butyl phthalate	84–74–2	0.057	28
1,4-Dinitrobenzene	100–25–4	0.32	2.3
4,6-Dinitro-o-cresol	534–52–1	0.28	160
2,4-Dinitrophenol	51–28–5	0.12	160

§ 268.48 TABLE UTS—UNIVERSAL TREATMENT STANDARDS—Continued

Regulated constituent—common name	CAS [1] No.	Wastewater standard. Concentration in mg/[2]	Nonwastewater standard. Concentration in mg/kg [3] unless noted as "mg/l TCLP"
2,4-Dinitrotoluene	121–14–2	0.32	140
2,6-Dinitrotoluene	606–20–2	0.55	28
Di-n-octyl phthalate	117–84–0	0.017	28
p-Dimethylaminoazobenzene	60–11–7	0.13	NA
Di-n-propylnitrosamine	621–64–7	0.40	14
1,4-Dioxane	123–91–1	NA	170
Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122–39–4	0.92	13
Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86–30–6	0.92	13
1,2-Diphenylhydrazine	122–66–7	0.087	NA
Disulfoton	298–04–4	0.017	6.2
Endosulfan I	939–98–8	0.023	0.066
Endosulfan II	33213–6–5	0.029	0.13
Endosulfan sulfate	1–31–07–8	0.029	0.13
Endrin	72–20–8	0.0028	0.13
Endrin aldehyde	7421–93–4	0.025	0.13
Ethyl acetate	141–78–6	0.34	33
Ethyl cyanide (Propanenitrile)	107–12–0	0.24	360
Ethyl benzene	100–41–4	0.057	10
Ethyl ether	60–29–7	0.12	160
bis(2-Ethylhexyl) phthalate	117–81–7	0.28	28
Ethyl methacrylate	97–63–2	0.14	160
Ethylene oxide	75–21–8	0.12	NA
Famphur	52–85–7	0.017	15
Fluoranthene	206–44–0	0.068	3.4
Fluorene	86–73–7	0.059	3.4
Heptachlor	76–44–8	0.0012	0.066
Heptachlor epoxide	1024–57–3	0.016	0.066
Hexachlorobenzene	118–74–1	0.055	10
Hexachlorobutadiene	87–68–3	0.055	5.6
Hexachlorocyclopentadiene	77–47–4	0.057	2.4
HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
Hexachloroethane	67–72–1	0.055	30
Hexachloropropylene	1888–71–7	0.035	30
Indeno (1,2,3-c,d) pyrene	193–39–5	0.0055	3.4
Iodomethane	74–88–4	0.19	65
Isobutyl alcohol	78–83–1	5.6	170
Isodrin	465–73–6	0.021	0.066
Isosafrole	120–58–1	0.081	2.6
Kepone	143–50–8	0.0011	0.13
Methacrylonitrile	126–98–7	0.24	84
Methanol	67–56–1	5.6	0.75 mg/l TCLP
Methapyrilene	91–80–5	0.081	1.5
Methoxychlor	72–43–5	0.25	0.18
3-Methylcholanthrene	56–49–5	0.0055	15
4,4-Methylene bis(2-chloroaniline)	101–14–4	0.50	30
Methylene chloride	75–09–2	0.089	30
Methyl ethyl ketone	78–93–3	0.28	36
Methyl isobutyl ketone	108–10–1	0.14	33
Methyl methacrylate	80–62–6	0.14	160
Methyl methansulfonate	66–27–3	0.018	NA
Methyl parathion	298–00–0	0.014	4.6
Naphthalene	91–20–3	0.059	5.6
2-Naphthylamine	91–59–8	0.52	NA
o-Nitroaniline	88–74–4	0.27	14
p-Nitroaniline	100–01–6	0.028	28
Nitrobenzene	98–95–3	0.068	14
5-Nitro-o-toluidine	99–55–8	0.32	28
o-Nitrophenol	88–75–5	0.028	13
p-Nitrophenol	100–02–7	0.12	29
N-Nitrosodiethylamine	55–18–5	0.40	28
N-Nitrosodimethylamine	62–75–9	0.40	2.3
N-Nitroso-di-n-butylamine	924–16–3	0.40	17
N-Nitrosomethylethylamine	10595–95–6	0.40	2.3
N-Nitrosomorpholine	59–89–2	0.40	2.3
N-Nitrosopiperidine	100–75–4	0.013	35
N-Nitrosopyrrolidine	930–55–2	0.013	35
Parathion	56–38–2	0.014	4.6
Total PCBs (sum of all PCB isomers, or all Aroclors)	1336–36–3	0.10	10

§ 268.48 TABLE UTS—UNIVERSAL TREATMENT STANDARDS—Continued

Regulated constituent—common name	CAS [1] No.	Wastewater standard. Concentration in mg/l [2]	Nonwastewater standard. Concentration in mg/kg [3] unless noted as "mg/l TCLP"
Pentachlorobenzene	608–93–5	0.055	10
PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
Pentachloroethane	76–01–7	0.055	6.0
Pentachloronitrobenzene	82–68–8	0.055	4.8
Pentachlorophenol	87–86–5	0.089	7.4
Phenacetin	62–44–2	0.081	16
Phenanthrene	85–01–8	0.059	5.6
Phenol	108–95–2	0.039	6.2
Phorate	298–02–2	0.021	4.6
Phthalic acid	100–21–0	0.055	28
Phthalic anhydride	85–44–9	0.055	28
Pronamide	23950–58–5	0.093	1.5
Pyrene	129–00–0	0.067	8.2
Pyridine	110–86–1	0.014	16
Safrole	94–59–7	0.081	22
Silvex (2,4,5-TP)	93–72–1	0.72	7.9
2,4,5-T (2,4,5-Trichlorophenoxyacetic acid)	93–76–5	0.72	7.9
1,2,4,5-Tetrachlorobenzene	95–94–3	0.055	14
TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
1,1,1,2-Tetrachloroethane	630–20–6	0.057	6.0
1,1,2,2-Tetrachloroethane	79–34–6	0.057	6.0
Tetrachloroethylene	127–18–4	0.056	6.0
2,3,4,6-Tetrachlorophenol	58–90–2	0.030	7.4
Toluene	108–88–3	0.080	10
Toxaphene	8001–35–2	0.0095	2.6
Bromoform (Tribromomethane)	75–25–2	0.63	15
1,2,4-Trichlorobenzene	120–82–1	0.055	19
1,1,1-Trichloroethane	71–55–6	0.054	6.0
1,1,2-Trichloroethane	79–00–5	0.054	6.0
Trichloroethylene	79–01–6	0.054	6.0
Trichloromonofluoromethane	75–69–4	0.020	30
2,4,5-Trichlorophenol	95–95–4	0.18	7.4
2,4,6-Trichlorophenol	88–06–2	0.035	7.4
1,2,3-Trichloropropane	96–18–4	0.85	30
1,1,2-Trichloro-1,2,2-trifluoroethane	76–13–1	0.057	30
tris-(2,3-Dibromopropyl) phosphate	126–72–7	0.11	0.10
Vinyl chloride	75–01–4	0.27	6.0
Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330–20–7	0.32	30
Antimony	7440–36–0	1.9	2.1 mg/l TCLP
Arsenic	7440–38–2	1.4	5.0 mg/l TCLP
Barium	7440–39–3	1.2	7.6 mg/l TCLP
Beryllium	7440–41–7	0.82	0.014 mg/l TCLP
Cadmium	7440–43–9	0.69	0.19 mg/l TCLP
Chromium (Total)	7440–47–3	2.77	0.86 mg/l TCLP
Cyanides (Total)[4]	57–12–5	1.2	590
Cyanides (Amenable)[4]	57–12–5	0.86	30
Fluoride	16964–48–8	35	NA
Lead	7439–92–1	0.69	0.37 mg/l TCLP
Mercury—Nonwastewater from Retort	7439–97–6	NA	0.20 mg/l TCLP
Mercury—All Others	7439–97–6	0.15	0.025 mg/l TCLP
Nickel	7440–02–0	3.98	5.0 mg/l TCLP
Selenium	7782–49–2	0.82	0.16 mg/l TCLP
Silver	7440–22–4	0.43	0.30 mg/l TCLP
Sulfide	8496–25–8	14	NA
Thallium	7440–28–0	1.4	0.078 mg/l TCLP
Vanadium	7440–62–2	4.3	0.23 mg/l TCLP
Zinc[5]	7440–66–6	2.61	5.3 mg/l TCLP

[1] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

[2] Concentration standards for wastewaters are expressed in mg/l are based on analysis of composite samples.

[3] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O or 40 CFR part 265, subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

[4] Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW–846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

[5] Zinc is not an "underlying hazardous constituent" in characteristic wastes, according to the definition at 268.2(i).
Note: NA means not applicable.

Appendix IV to Part 268 [Revised]

32. Appendix IV to part 268 is revised to read as follows:

Appendix IV to Part 268—Wastes Excluded From Lab Packs Under the Alternative Treatment Standards of § 268.42(c)

Hazardous waste with the following EPA Hazardous Waste Codes may not be placed in lab packs under the alternative lab pack treatment standards of § 268.42(c): D009, F019, K003, K004, K005, K006, K062, K071, K100, K106, P010, P011, P012, P076, P078, U134, U151.

Appendix V to Part 268 [Removed]

33. Appendix V to part 268 is removed and reserved.

Appendix X to Part 268 [Added]

34. Appendix X to part 268 is added to read as follows:

APPENDIX X TO PART 268—RECORDKEEPING, NOTIFICATION, AND/OR CERTIFICATION REQUIREMENTS

Entity	Scenario	Frequency	Recipient of notification	Recordkeeping, notification, and/or certification requirements
I. Generator	A. Waste does not meet applicable treatment standards or exceeds applicable prohibition levels (see § 268.7(a)(1)).	Each shipment	Treatment or storage facility.	Notice must include: • EPA hazardous waste number. • Constituents of concern. • Treatability group. • Manifest number. • Waste analysis data (where available).
	B. Waste can be disposed of without further treatment (meets applicable treatment standards or does not exceed prohibition levels upon generation) (see § 268.7(a)(2)).	Each shipment	Land disposal facility	Notice and certification statement that waste meets applicable treatment standards or applicable prohibition levels. Notice must include: • EPA hazardous waste number. • Constituents of concern. • Treatability group. • Manifest number. • Waste analysis data (where available). Certification statement required under § 268.7(a)(2)(ii) that waste complies with treatment standards and prohibitions.
	C. Waste is subject to exemption from a prohibition on the type of land disposal utilized for the waste, such as a case-by-case extension under § 268.5, an exemption under § 268.6, or a nationwide capacity variance (see § 268.7(a)(3)).	Each shipment	Receiving facility	Notice must include: • Statement that waste is not prohibited from land disposal. • EPA hazardous waste number. • Constituents of concern. • Treatability group. • Manifest number. • Waste analysis data (where available). • Date the waste is subject to the prohibitions.
	D. Waste is being accumulated in tanks or containers regulated under 40 CFR 262.34 and is being treated in such tanks or containers to meet applicable treatment standards (see § 268.7(a)(4)).	Minimum of 30 days prior to treatment activity.	EPA Regional Administrator (or designated representative) or authorized State. Delivery must be verified.	Generator must develop, keep on-site, and follow a written waste analysis plan describing procedures used to comply with the treatment standards. If waste is shipped off-site, generator also must comply with notification requirement of § 268.7(a)(2).
	E. Generator is managing a lab pack containing certain wastes and wishes to use an alternative treatment standard (see § 268.7(a)(8)).	Each shipment	Treatment facility	Notice in accordance with § 268.7(a)(1), (a)(5), and (a)(6), where applicable. Certification in accordance with § 268.7(a)(8).

APPENDIX X TO PART 268—RECORDKEEPING, NOTIFICATION, AND/OR CERTIFICATION REQUIREMENTS—Continued

Entity	Scenario	Frequency	Recipient of notification	Recordkeeping, notification, and/or certification requirements
	F. Small quantity generators with tolling agreements (pursuant to 40 CFR 262.20(e)) (see §268.7(a)(9)).	Initial shipment	Treatment facility	Must comply with applicable notification and certification requirements in §268.7(a). Generator also must retain copy of the notification and certification together with tolling agreement on-site for at least 3 years after termination or expiration of agreement.
	G. Generator has determined waste is restricted based solely on his knowledge of the waste (see §268.7(a)(5)).	N/A	Generator's file	All supporting data must be retained on-site in generator's files.
	H. Generator has determined waste is restricted based on testing waste or an extract (see §268.7(a)(5)).	N/A	Generator's file	All waste analysis data must be retained on-site in generator's files.
	I. Generator has determined that waste is excluded from the definition of hazardous or solid waste or exempt from Subtitle C regulation (see §268.7(a)(6)).	One-time	Generator's file	Notice of generation and subsequent exclusion from the definition of hazardous or solid waste, or exemption from Subtitle C regulation, and information regarding the disposition of the waste.
	J. Generator (or treater) claims that hazardous debris is excluded from the definition of hazardous waste under 40 CFR 261.3(f)(1) (see §268.7(d)).	One-time	EPA Regional Administrator or authorized State. Notification must be updated as necessary under §268.7(d)(2).	Notice must include: • Name and address of Subtitle D facility receiving treated debris. • EPA hazardous waste number and description of debris as initially generated. • Technology used to treat the debris (Table 1 of §268.45). Certification and recordkeeping in accordance with §268.7(d)(3).
	K. Generator (or treater) claims that characteristic wastes are no longer hazardous (see §268.9(d)).	One-time	Generator's (or treater's) files and EPA Regional Administrator or authorized State. Notification must be updated as necessary under §268.9(d).	Notice must include: • Name and address of Subtitle D facility receiving the waste. • EPA hazardous waste number and description of waste as initially generated. • Treatability group. • Underlying hazardous constituents. Certification in accordance with §268.9(d)(2).
	L. Other recordkeeping requirements (see §268.7(a)(7)).	N/A	Generator's file	Generator must retain a copy of all notices, certifications, demonstrations, waste analysis data, and other documentation produced pursuant to §268.7 on-site for at least 5 years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal. This period is automatically extended during enforcement actions or as requested by the Administrator.
II. Treatment Facility	A. Waste shipped from treatment facility to land disposal facility (see §268.7(b)(4), (b)(5)).	Each shipment	Land disposal facility ..	Notice must include: • EPA hazardous waste number. • Constituents of concern. • Treatability group. • Manifest number. • Waste analysis data (where available). Applicable certification, in accordance with §268.7(b)(5)(i), (ii) or (iii), stating that the waste or treatment residue has been treated in compliance with applicable treatment standards and prohibitions.

APPENDIX X TO PART 268—RECORDKEEPING, NOTIFICATION, AND/OR CERTIFICATION REQUIREMENTS—Continued

Entity	Scenario	Frequency	Recipient of notification	Recordkeeping, notification, and/or certification requirements
	B. Waste treatment residue from a treatment or storage facility will be further managed at a different treatment or storage facility (see §268.7(b)(6)).	Each shipment	Receiving facility	Treatment, storage, or disposal facility must comply with all notice and certification requirements applicable to generators.
	C. Where wastes are recyclable materials used in a manner constituting disposal subject to §266.20(b) (see §268.7(b)(7)).	Each shipment	Regional Administrator (or delegated representative).	No notification to receiving facility required pursuant to §268.7(b)(4). Certification as described in §268.7(b)(5) and notice with information listed in §268.7(b)(4), except manifest number. Recycling facility must keep records of the name and location of each entity receiving hazardous waste-derived products.
III. Land Disposal Facility ...	A. Wastes accepted by land disposal facility (see §268.7(c)).	N/A	N/A	Maintain copies of notice and certifications specified in §268.7(a) and (b).

Certification Statements

A. I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with the treatment standards specified in 40 CFR part 268, subpart D and all applicable prohibitions set forth in 40 CFR 268.32 or RCRA section 3004(d). I believe that the information I submitted is true, accurate and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment. (§ 268.7(a)(2)(ii))

B. I certify under penalty of law that I personally have examined and am familiar with the waste and that the lab pack does not contain any wastes identified at §268.42(c)(2). I am aware that there are significant penalties for submitting a false certification, including the possibility of fine or imprisonment. (§ 268.7(a)(8))

C. I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the treatment process has been operated and maintained properly so as to comply with the performance levels specified in 40 CFR part 268, subpart D, and all applicable prohibitions set forth in 40 CFR 268.32 or RCRA section 3004(d) without impermissible dilution of the prohibited waste. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment. (§ 268.7(b)(5)(i))

D. I certify under penalty of law that the waste has been treated in accordance with the requirements of 40 CFR 268.42. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment. (§ 268.7(b)(5)(ii))

E. I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the nonwastewater organic constituents have been treated by incineration in units operated in accordance with 40 CFR part 264, subpart O or 40 CFR part 265, subpart O, or by combustion in fuel substitution units operating in accordance with applicable technical requirements, and I have been unable to detect the nonwastewater organic constituents, despite having used best good faith efforts to analyze for such constituents. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment. (§ 268.7(b)(5)(iii))

F. I certify under penalty of law that the waste has been treated in accordance with the requirements of 40 CFR 268.40 to remove the hazardous characteristic. This decharacterized waste contains underlying hazardous constituents that require further treatment to meet universal treatment standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment. (§ 268.7(b)(5)(iv))

G. I certify under penalty of law that the debris have been treated in accordance with the requirements of 40 CFR 268.45. am aware that there are significant penalties for making a false certification, including the possibility of fine and imprisonment. (§ 268.7(d)(3)(iii))

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

35. The authority citation for Part 271 continues to read as follows:

Authority: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

Subpart A—Requirements for Final Authorization

36. Section 271.1(j) is amended by adding the following entries to Table 1 in chronological order by date of publication in the **Federal Register**, and by adding the following entries to Table 2 in chronological order by effective date in the **Federal Register**:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
*	*	*	*
September 19, 1994	Land Disposal Restrictions Phase II—Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes[4] in §268.38.	[Insert FR page numbers].	December 19, 1994.

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984—Continued

Promulgation date	Title of regulation	Federal Register reference	Effective date
* * * * * * *			

* * * * *

[4] The following portions of this rule are not HSWA regulations: §§ 260.30, 260.31, 261.2.

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
* * * * * * *			
December 19, 1994	Prohibition on land disposal of newly listed and identified wastes.	3004(g)(4)(C) and 3004(m)	September 19, 1994. 59 FR [insert page numbers].
September 19, 1995	Establishment of treatment standards for D001 and D012–D017 wastes injected into nonhazardous deep wells.	3004(m)	Do.
September 19, 1996	Prohibition on land disposal of radioactive waste mixed with the newly listed or identified wastes, including soil and debris.	3004(g)(4)(C) and 3004(m)	Do.
* * * * * * *			

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[FR Doc. 94–22493 Filed 9–16–94; 8:45 am]
BILLING CODE 6560–50–P

federal register

Monday
September 19, 1994

Part III

Department of Commerce

National Telecommunications and Information Administration

Inquiry on Universal Service and Open Access Issues; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 940955–4255]

Inquiry on Universal Service and Open Access Issues

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of inquiry; request for comments.

SUMMARY: NTIA is conducting a comprehensive review of universal service and open access issues in communications. NTIA requests public comment relevant to such a review. After analyzing the comments, NTIA may issue a report, a series of short analyses, and/or make recommendations to the Administration's Information Infrastructure Task Force, the Federal Communications Commission, and to Congress.

DATES: The public should file comments on or before December 14, 1994 to receive full consideration.

ADDRESSES: Please send comments (seven copies plus one copy on diskette, preferably WordPerfect or DOS compatible) to the Office of Policy Analysis and Development, NTIA, U.S. Department of Commerce, 14th St. and Constitution Ave., N.W., Room 4725, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: James McConnaughey or Cynthia Nila, Office of Policy Analysis and Development, (202) 482–1880.

SUPPLEMENTARY INFORMATION:

Authority: National Telecommunications and Information Administration Organization Act of 1992, Public Law 102–538, 106 Stat. 3533 (1992) (codified at 47 U.S.C. 901 *et seq.*)

I. Introduction[1]

1. The United States has a long-standing commitment to the achievement of "universal service"—widespread availability of "basic" telephone service at affordable rates. First articulated in the early twentieth century,[2] universal service has since been adopted by Federal and State regulators as one of the core objectives of U.S. telecommunications policy. For example, it was incorporated in general terms in Section 1 of the Communications Act of 1934.[3] More importantly, many of the major regulatory reforms that have been considered over the past several decades—most notably decisions concerning whether and under what conditions to allow competition in telecommunications service and equipment markets—have been evaluated, at least in part, in terms of their possible impact on universal service.

2. Historically, universal service has meant widespread access to voice-grade telephone service, commonly referred to as "plain old telephone service" (POTS). The fundamental objective has been to give all Americans an opportunity to pick up the telephone and, at a reasonable cost, have a voice conversation with anyone else in the country or, increasingly, the world. In recent years, however, many have questioned whether traditional notions of universal service are adequate to meet the needs of the American people, now and in the 21st century.

3. This reassessment is prompted by two principal developments. First is the emergence of information as a vital economic resource and source of individual empowerment. In 1991, U.S. companies for the first time spent more money on computer and communications equipment than on industrial, mining, farm and manufacturing machinery—dramatic evidence of the nation's transition from the Industrial Age to the Information Age.[4] Increasingly, the ability of U.S. businesses to remain competitive in a global marketplace and to create challenging, high-paying jobs hinges on their proficiency in creating, manipulating, managing, and using information. Similarly, an individual's ability to acquire, develop, and sustain marketable job skills—and, indeed, to be an informed, productive participant in American society—will depend on how well he or she can access, analyze, and assimilate information.

4. Second, technological changes—particularly the convergence of computers and communications and the deployment of high capacity, digital transmission facilities—promise to make telecommunications networks the highways of the Information Age, the principal means by which individuals and businesses access and distribute essential information resources. In this environment, it may be anachronistic to continue speaking of universal service in terms of voice telephone service. Accordingly, consensus is growing that there is a need to redefine that concept to meet the demands of a new age.

5. Reform of universal service policies would be necessary even if there were no redefinition issue. As described more fully below, many experts agree that current pricing policies for voice telephone service are characterized by extensive subsidies between and among services, although the extent of those subsidies remains a matter of considerable dispute.[5] In other words, certain services (*e.g.*, long distance, business service) have been overpriced to maintain low cost residential voice service. Whether or not that pricing structure was ever desirable as a matter of policy,[6] it could be sustained only in a market environment characterized by monopoly provision of telephone service.

6. That environment is rapidly becoming a thing of the past. Competition is the norm in many telecommunications services and equipment markets; it is growing rapidly in the rest. Competition drives prices toward the costs of providing those services and, in so doing, undermines traditional pricing structures that incorporate inter-service subsidies. As a result, even though competition is not inimical to universal service goals,[7] its emergence and expansion is forcing a re-examination of traditional universal service funding policies as surely as technological change and the emergence of the Information Age are prompting changes in the way universal service is defined.

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[1] This Notice of Inquiry (Notice) and other related documents are also available in electronic form on the NTIA Bulletin Board at (202) 482–1199. Please set your communications parameters to No parity, 8 data bits, and 1 stop bit (N,8,1). Commenters are encouraged to file their comments electronically at the same number.

[2] The concept was first articulated by Theodore Vail, President of AT&T, in 1907, although his concept of universal service was quite distinct from modern notions of what that term means. *See* Milton Mueller, *Universal Service in Telephone History*, 17 Tel. Pol. 352, 353, 356–358 (1993).

[3] Section 1 authorizes the Federal Communication Commission (FCC) to regulate interstate and foreign communications "so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges." 47 U.S.C. 151 (1988). Telecommunications reform legislation pending in both Houses of Congress would make preservation and advancement of universal service an explicit goal of U.S. policy. *See* S. 1822, the Communications Act of 1934, 103d Cong., 2d Sess. Sections 101, 102 (1994); H.R. 3626, the Antitrust and Communications Reform Act of 1994, 103d Cong., 2d Sess. § 301 (1994).

[4] *See* Thomas Stewart, *The Information Age in Charts*, Fortune, Apr. 4, 1994, at 75.

[5] *See infra* Section IV.

[6] Several economists have estimated that the welfare losses associated with the existing subsidy structure can be measured in the billions of dollars annually. *See, e.g.*, James Griffin, *The Welfare Implications of Externalities and Price Elasticities for Telecommunications Pricing*, 64 Rev. Econ. & Stat. 59 (1982); Lewis Perl, *Welfare Gains from Cost-Based Telephone Pricing* (June 19, 1986) (unpublished paper).

[7] *See infra* Section II.

The challenge for government and service providers alike is to find a new funding scheme that is compatible with and sustainable in a competitive market environment.

7. The National Telecommunications and Information Administration (NTIA) is issuing this Notice to gather public comment on these important issues. The Clinton Administration (the Administration) has stated a commitment to extending the concept of universal service to ensure that information resources are available to all at affordable rates.[8] This policy is a matter of fundamental fairness; if information means empowerment, the United States "cannot accept a division of our people among telecommunications 'haves' and 'have-nots.'"[9]

8. This Notice represents another stage in NTIA's continuing investigation of universal service issues.[10] Since December 1993, NTIA has conducted field hearings in five locations across the country to gather information on those issues.[11] This Notice has been shaped by what the agency has learned over the course of those hearings. The Notice also seeks to supplement the record developed at those hearings on the many questions subsumed within the concept of universal service. At the end of this process, NTIA will work to develop a concept of universal service that fits the challenges and opportunities of the Information Age. As importantly, NTIA intends to identify mechanisms that can fund an expanded version of universal service in a competitive market environment.

9. Finally, we also seek comment on another issue related to the policies underlying universal service—"open access." If, as noted above, information is of increasing importance to businesses and individuals alike, and if competition among service providers is likely to be the norm in the future, ensuring universal service for consumers is only part of the equation. Steps must also be taken to afford information providers access to consumers and vice versa. Accordingly, the Administration is also committed to ensuring that telecommunications facilities and networks are sufficiently "open" so that all information providers can transmit their wares to consumers across those facilities reliably, efficiently, and seamlessly, without compromising the integrity or security of the information delivered.[12] NTIA therefore requests comment on a variety of questions relating to the meaning and implementation of open access.

10. Section II of the Notice considers the impact of competition on universal service goals. Section III.A of the Notice addresses current universal service policies and solicits comment on the degree to which the nation has achieved the goal of providing basic voice telephone service to all Americans. Section III.B considers the issue of redefining the traditional concept of universal service and determining what services or functions should be included in an expanded definition of universal service. Section IV focuses on mechanisms for funding universal service in an increasingly competitive market environment. Section V focuses on the role of the Federal and State governments in determining universal service policies. Finally, Section VI requests comment on the definition and implementation of open access.

II. Competition and Universal Service

11. The Federal government and many States have made a fundamental commitment to introducing and expanding competition in telecommunications markets. The benefits of that commitment are increasingly apparent and show no signs of diminishing. There is also some concern, however, about the effects of competition on universal service. While those concerns merit attention, there is much evidence to suggest that competition and universal service are not incompatible goals. Market rivalry both drives prices towards underlying costs and reduces underlying costs by forcing competing firms to operate more efficiently. Competition thus tends to reduce prices for goods and services, making them more affordable for more consumers and ultimately reducing the need for subsidies. At the same time, competition also increases the range of services and products available to consumers and, potentially, their geographic reach as well, further promoting universal service goals.

12. The potential effects of competition on rates and consumer choice can be gleaned from the recent history of the long distance and CPE markets in the United States. Prior to the break-up of the Bell System in 1984, most of the United States was served by a single long distance network operated by AT&T. Today, after a decade of government efforts to facilitate entry in the long distance market, there are more than 500 long distance carriers in the United States, offering a wide, ever-changing array of services and pricing options.[13] Due in part to this active rivalry among firms, long distance rates have declined more than sixty percent since 1984 by some estimations, making long distance calling more affordable for more Americans.[14]

13. Similarly, when the Bell System controlled the CPE market, customers could lease (but not buy) any telephone they wanted, so long as it was a black instrument that delivered unadorned voice service. Today, customers can choose their phones from a wide variety of colors, sizes, shapes, and designs. Modern telephones also include a variety of features (e.g., speed dialing, re-dial, memory programming) that greatly increase usefulness of that equipment for many customers. In addition, its cost has declined

[8] *The National Information Infrastructure: Agenda for Action* 58 Fed. Reg. 49,025, at 49,028 (1993) (*Agenda for Action*).

[9] *Id.*

[10] The Administration's activities relating to universal service are one facet of a comprehensive National Information Infrastructure (NII) initiative. The Administration has established an interagency Information Infrastructure Task Force (IITF), chaired by the Secretary of Commerce, to address the many issues relating to deployment of the NII. The IITF operates through a number of subcommittees and working groups, and with the assistance of a public/private sector Advisory Council. For further information on the IITF and related organizations, see *The NII Field Hearings on Universal Service and Open Access: America Speaks Out* 1–2 (Sept. 1944) (Report of the Telecommunications Policy Committee of the Information Infrastructure Task Force) (*NII Field Hearings*).

[11] Hearings were held in Albuquerque, New Mexico (December); South Central Los Angeles (February); Raleigh-Durham, North Carolina (April); Sunnyvale, California (May); and Indianapolis, Indiana (July). At each hearing, NTIA received testimony from public interest groups, state and local governments, labor, industry, and academia. Summaries of each of the hearings are on the on-line NTIA Bulletin Board. See not 1 for access information. In this Notice, we also request comment on how best to continue and expand these public outreach activities.

[12] *Agenda for Action, supra* note 8, at 49,027, 49,029. Open access may also permit users themselves to develop new services and applications or to exchange information among themselves, without waiting for services to be offered by commercial providers. *Id.* at 49,029.

[13] Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, *Trends in Telephone Service*, at 31 (May 1994) (*Telephone Trends*). AT&T now captures less than 60 percent of all long distance revenues. Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, *Long Distance Market Shares—Fourth Quarter, 1993* Table 6 (Apr. 1994).

[14] *See, e.g.*, Letter from Gerald J. Kovach, MCI, to Clarence L. Irving, Jr., NTIA, Attachment 1 at 1 (June 9, 1994) (long distance rates, adjusted for inflation, have declined 66% since 1985). As a result of the sharp decline in long distance rates, long distance calling has surged in recent years, especially relative to local calling. Toll calls (measured in minutes of use) comprised 26.6% percent of all calls in 1992, as compared to 19.9% in 1984. *Telephone Trends, supra* note 13, at 25 and Table 16.

considerably in the last decade (as much as 50 percent in "real" terms).[15]

14. The impact of competition on universal service can be examined more directly by reviewing the development of local telephone service after expiration of the original Bell telephone patents in 1893/94 unleashed a twenty-five year period of competition in the provision of local telephone service.[16] In 1895, after nineteen years of the Bell System patent monopoly, there were only 251,994 telephones in the United States, or one telephone for every 276 of the nation's 69.5 million people. By 1920, at the close of the competitive era, there were some 13.4 million telephones in the United States, or one telephone for every eight of the nation's 105.7 million people.[17] Moreover, fifty-five percent of all telephone subscribers were residential customers, as compared to only ten percent in 1895.

15. We seek comment on the relationship between competition and universal service. Will competition help make new advanced telecommunications services more readily available across the nation and thereby reduce the need for universal service regulation? Some argue that the universal service rationale is based on the premise that the market alone cannot uniformly guarantee provision of telecommunications and services. They believe that depending on the market to provide advanced services may seriously impede access by important segments of society to those services, particularly if the offerings are not commercially viable in certain areas.[18] Consumer and civil rights groups, in particular, raise the specter of "electronic redlining," in which low income and minority neighborhoods are "systematically underrepresented" in the deployment of advanced services, as has been alleged with respect to various local telephone companies' video dialtone networks.[19]

16. To what extent is "electronic redlining" occurring or likely to occur, *i.e.*, the calculated exclusion of a geographic area from deployment of advanced telecommunications capabilities or services on the basis of income, ethnicity, race, or disability? What weight should be assigned to those arguments that identify economic reasons for serving certain areas on a less timely basis than others?

17. Various proposals address the concern that a marketplace-driven definition of universal service may not bring comparable services to all segments of the population or to all areas of the country at the same rate. One proposal, for example, is for government to require firms to provide services to community centers, such as schools and libraries, at the same time that such services are first provided to businesses and residences. The proponents of this approach claim that focusing on providing service to such centralized points within a community, as a transitional mechanism, could make desirable services more widely available without incurring the risks and costs of mandating universal provision of uneconomical or unwanted services.[20] We request comment on this approach. In particular, do such public institutions have the facilities, funds, and hours of operation to afford individuals, especially the young, a full and fair opportunity to explore the highways of the Information Age? If not, what mechanisms could be explored for providing such resources?

18. We also seek comment on the possible effects of competition on the achievement of universal service goals in rural areas. Some argue that competition in such areas is not only unsustainable, but potentially destructive to universal service goals.[21] On the other hand, competition may spur the introduction or expansion of service in rural areas, as suggested by the forty-fold increase in telephone penetration that occurred in rural areas during the competitive period between 1895 and 1920.[22] We also solicit comment as to whether the "rural subscriber may be just as willing to ride the information highway as his urban counterpart," thereby creating a market setting that could sustain competition.[23]

III. Universal Service Today and in the Future

19. The record developed over the course of NTIA's five universal service field hearings demonstrates considerable public support for expanding the current definition of universal service beyond "plain old telephone service"—POTS.[24] Accordingly, this section of the Notice addresses the myriad issues raised by such a redefinition.[25] Because any new concept of universal service will build on the existing definition, it is appropriate, however, first to consider the extent to which the nation has achieved its goal of universal POTS before turning our attention to a new definition of universal service.

A. Achievement of Universal POTS

19a. In many respects, U.S. universal service policies have been a major success. As of March, 1994, 93.9% of all American households had telephone service, compared to 91.4% a decade earlier, and fewer than fifty percent at the end of World War II.[26] Moreover,

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[15] *See* National Telecommunications and Information Administration, U.S. Dep't of Commerce, NTIA Special Publication 91–26 *The NTIA Infrastructure Report: Telecommunications in the Age of Information* 204–205 and n. 707 (1991) (*Infrastructure Report*).

[16] The following discussion is taken from Mueller, *supra* note 2, at 356–358, 360–361.

[17] In 1895, the number of telephones in the United States was growing by five percent annually. *Id.* at 356. At that rate, the nation would have had fewer than one million telephones by 1920.

[18] Raymond Lawton, Associate Director of The National Regulatory Research Institute, pointed out in his testimony at the Indianapolis field hearings that in an unregulated market, services are provided to rural/residential/low income service recipients last because service to them is often more expensive and they are most often unable to pay. *See* Lawton Comments, p. 2.

[19] *See* Center for Media Education, Consumer Federation of America, *et al.*, *"Information Superhighway" Could Bypass Low Income and Minority Communities*, (released May 23, 1994) and associated petitions filed with the FCC on the same date. Under the FCC's "video dialtone" rules, a local telephone company can construct, operate, and maintain a transport facility within its local service area, leasing channel capacity to unaffiliated programmers on a common carrier basis. *See Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54–63.58*, Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 5781 (1992).

[20] *See, e.g.*, Comments of Carlos Atencio, Chairman, New Mexico Educational Technology Coordination Council at the Los Alamos National Laboratories, New Mexico Hearing (Dec. 16, 1993).

[21] *See, e.g.*, John Panzar and Steven Wildman, *Competition in the Local Exchange: Appropriate Policies to Maintain Universal Service in Rural Areas* (undated, unpublished paper) (Panzar and Wildman). To gather a more complete picture of market conditions in rural areas, we request the following data from rural telephone companies (although additional information would be welcome): cost of service per access line; average minutes of use per access line; number of business lines versus number of residential access lines; long distance calling by business customers versus residential customers; and nature, number, and market share of competitors, where applicable.

[22] Nearly 40% of all farm households had a telephone in 1920, as compared to less than one percent in 1895. *See* Mueller, *supra* note 2, at 356, 357.

[23] The Universal Service Subcommittee, Western Alliance, *Universal Service in the Nineties*, Section II, at 2 (a draft report by a consortium of western rural telephone companies released at the National Association of Regulatory Utility Commissioners (NARUC) Summer Meetings, San Diego, California, July 1994).

[24] *NII Field Hearings*, *supra* note 10, at 8–9.

[25] This Notice does not, of course, contain the definitive list of such issues. We encourage commenters to raise other important matters not touched on in the Notice.

[26] *See* Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, *Telephone Subscribership in the United States* at 6, Table 1 (Aug. 1994) (*Telephone Subscribership*) (citing the Census Bureau's Current Population Survey (CPS)). *See also* Congressional Budget Office, *The Changing Telephone Industry: Access Charges, Universal Service, and Local Rates* 55 (June 1984) (*cited in* Office of Policy Analysis and Development, NTIA, *Telephone Subscribership*

telephone subscribership in the United States exceeds that in most other nations, often by a substantial margin.[27]

20. On the other hand, although the vast majority of American homes have at least one telephone, approximately six million households have none.[28]

Household penetration rates (*i.e.*, the percentage of households with a telephone) vary substantially both from State to State and within a State.[29] Subscribership is also particularly low among certain segments of our society. Approximately one-third of African-American and Hispanic households with annual incomes of less than $5,000 lack telephone service, as compared to twenty percent of white households.[30] Fifty-three percent of Native American households on reservations do not have phones.[31] Nearly three-quarters of all phoneless households are renters, and fifteen percent of households headed by a person under twenty-five years of age are without telephones.[32] Finally, in many states, some areas have no telephone service at all—not even pay phones.[33]

21. Statistics such as these have caused many observers to conclude that universal service has not been fully achieved in the United States.[34] Low penetration rates among certain groups appear to result from a variety of factors. For example, witnesses at NTIA's Albuquerque, New Mexico, field hearing cited the state's low per-capita income as an important cause of the low penetration in the area.[35] More than sixty-five percent of the households of the Navajo Nation in New Mexico do not subscribe to telephone service because telephone service is either not affordable or not available.[36] Language barriers and the need for increased public education, at least among certain groups, may also result in reduced telephone service penetration.[37]

22. We seek further comment on these matters. Are there other underserved groups besides those we have mentioned? Are the measures used and types of data currently being collected by the Census Department and other government agencies adequate for determining whether universal service goals are being met in all sectors of society? If so, parties are requested to provide that information for the record. If not, what recommendations are there for providing more comprehensive and targeted data on these issues?

23. We also solicit comment (particularly studies, surveys, etc.) on why some Americans do not have telephone service. Is income the determining or predominant factor? Does subscribership depend to any significant degree on geography (*e.g.*, do penetration levels differ between rural and urban areas after controlling for factors like income)? To what extent are cultural factors important? If such factors are important, what steps can be taken to overcome them? Do different considerations affect a household's ability to retain phone service over time, as compared to its decision to subscribe initially?

24. Finally, we request comment on whether implementation of universal service should be measured in terms of availability of POTS rather than penetration. For example, some households may not have telephone service simply because they choose not to subscribe. What measure(s), applied on a regular basis for monitoring purposes, would best enable policymakers to distinguish such households from those that desire basic service but cannot obtain it?

B. Formulating an Expanded Definition of Universal Service

25. As the nation decides whether and how to redefine universal service, it is important to remember that, to a large extent, the current debate represents but a new phase in a continuing process. Although universal service has traditionally been defined as voice-grade POTS, the minimally-acceptable characteristics of that service have changed over the past sixty years. Thus, direct dialing became popular as it obviated the need to make more expensive operator-assisted calls in many instances and regulators mandated lower rates for directly-dialed calls. Party-line service has been replaced in recent decades by single-line service. Some states have directed local exchange carriers to incorporate touch-tone capability into their basic service offerings because of its importance in accessing many information services. In short, the current interest in redefining universal service is consistent with past practice. The principal differences are the ever-

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in the United States: A Post-Divestiture Analysis (1985)).

Basic telephone service has also become increasingly affordable for the average American, particularly since the AT&T divestiture in 1984. Between 1983 and 1993, prices for telephone service, on average, rose less (2.0%) than the consumer price index for all items (3.8%) or for all services (4.7%). Moreover, since 1984, telephone service has comprised no more than 2.0–2.1% of annual household expenditures. *Telephone Trends, supra* note 13, Table 3, Table 8. Over this same period of time, the variety and quality of telephone services and equipment have also increased dramatically. Devices such as touch-tone service, multiple phones, cordless phones, and answering machines, that were once regarded as luxuries, have now become commonplace for many U.S. citizens.

[27] For example, compared to the world's major industrial nations—the so-called "Group of 7"—the United States in 1992 (56.49) trailed only Canada (59.21) in terms of main telephone lines per 100 inhabitants while surpassing France (52.13), Japan (46.74), the United Kingdom (45.25), Germany (43.96), and Italy (41.03). International Telecommunication Union, *World Telecommunication Development Report 1994*, A–3. Canada's success in extending universal service to its citizens (evidenced by the 98.7% of Canadian households in 1992 with basic telephone service) demonstrates, however, that there is room for improvement in the United States. *See* Universal Service Project, NARUC Subcommittee on Communications, Staff Draft Position Statement on Universal Service Principles 4 (June 1994) (*NARUC Paper*).

[28] H.R. Rpt. No. 560, 103d Cong., 2d Sess. 6 (1994).

[29] In March 1994, telephone penetration ranged from 87.7% in South Carolina to 97.2% in Pennsylvania. *Telephone Subscribership, supra* note 26, at 14, Table 2. Further, while more than half of Southwestern Bell's 550 central offices in Texas report penetration rates of 95% or higher, some seven percent of the company's central offices have penetration rates of 80% or less. Source: Southwestern Bell Telephone analysis of 1990 Census data. We request comment from other telephone companies as to whether similar variations exist in their subscribership.

[30] *Telephone Subscribership, supra* note 26, at 23, Table 4. In 1989, about 50 percent of households at or below the poverty level headed by single women with small childen did not have telephone service. Jorge Schement, *Beyond Universal Service: Characteristics of Americans Without Telephone Service* 4 (unpublished paper presented at a conference sponsored by The Benton Foundation and The Columbia Institute for Tele-Information, Washington. D.C., Oct. 15, 1993).

[31] Bureau of the Census, U.S. Dep't of Commerce News (Release #CB94–127) Aug. 22, 1994, at 1.

[32] Bureau of the Census, U.S. Dep't of Commerce, SB/94–16, *Phoneless in America* 1 (July 1994) (*Phoneless*) (1990 data).

[33] Universal Service Project, NARUC Subcommittee on Communications, Staff Position Statement on Universal Service Principles 4 (July 19, 1994).

[34] *See, e.g., NII Field Hearings, supra* note 10, at 8.

[35] *See* Transcript of New Mexico Hearing at 55, 253–254 (Comments of Thomas A. Garcia, U S WEST Vice President, New Mexico; Comments of Kenneth Solomon, Acting Director, Telecommunications Division, New Mexico State Corporation Commission (Dec. 16, 1993)). Another factor in affordability may be long distance charges. *See* Field Research Corporation *Affordability of Telephone Service* 68, Customer Survey Conducted for GTE and Pacific Bell (Oct. 1993) (finding that, among other things, customers who find it difficult to afford service have a higher percentage of their average monthly bill attributable to long distance charges).

[36] Comments of Rodger Boyd, Executive Director of the Navajo Nation, Division of Economic Development (Dec. 16, 1993).

[37] For example, research indicates that people with limited knowledge of the English language frequently are not able to take full advantage of the programs and services available to them. A 1992 survey of Chinese, Korean and Latino consumers in San Francisco, Los Angeles, New York, Chicago, and Brownsville, Texas, about their knowledge of telecommunications revealed that 43% did not know how to begin the process of having a phone installed and 17% did not know who to call if the phone was not working. *See* Comments of Bong Hwan Kim, Executive Director, Korean Youth and Community Center, Los Angeles hearing, at 6 (Feb. 16, 1994).

expanding range of services that could be incorporated into a revised concept of universal service and the quicker pace at which policymakers must make their decisions.

26. As noted above, there appears to be strong public support for expanding the existing definition of universal service. There is, however, little consensus about what services, features, and capabilities should be included within a new definition. Witnesses at the NTIA field hearings suggested that universal service encompass a host of different services, including: access to a basic set of information and telecommunications services; multiple languages, including Spanish and Native American languages that require special, non-ASCII[38] characters; set-aside resources, facilities, and capacity for public, education, and government training and use; new technologies such as video link and cellular telephone service; and services defined as characteristics or features, rather than technologies.[39] A random survey of 1,000 likely voters conducted by the Benton Foundation found that Americans are very interested in educational and informational services.[40]

27. If universal service is to be redefined as a group of services or capabilities, some mechanism or set of principles must be found to help select from the wealth of possible alternatives. We therefore request comment on whether there is an organizing principle or set of principles that can be used to determine whether a particular service or feature should be included within a modern concept of universal service. This is essential because redefinition is not without potential pitfalls. Adding each new component to the package deemed universally necessary increases both the societal costs of making that package universally available as well as the chances of prematurely mandating services or features that are ultimately proven to be commercially undesirable.[41]

28. One approach could be to allow the marketplace to identify, at least in the first instance, services and features that warrant inclusion in an expanded definition of universal service.[42] Under this approach, private firms would offer services to consumers in competition with other companies. If some service were subscribed to by a predesignated minimum percentage of U.S. households, government regulators would either have the authority to consider whether to make that service universally available or be required to do so.[43] We seek comment on whether government should select services to be included in an expanded definition of universal service and, if so, on what basis such services should be chosen? What role should the market play in determining that mix? Should there be some threshold of market penetration before a capability or service is added to the definition of universal service? If so, what should the threshold be and why? Are there disadvantages in relying on market forces even in the first instance?

29. An alternative to identifying particular services to be incorporated into an expanded concept of universal service would be to define universal service in terms of a network connection that would enable customers to access any service available via such network. If universal service were to be defined in such a fashion, the cost of making it available throughout the country would likely be reduced. Moreover, government officials would not be required to make difficult determinations about the relative value of different services or equipment; instead, it should allow the market to determine customer valuation of each service or equipment item. On the other hand, government officials may have to make equally difficult decisions as to the type of network connection that should be provided.

30. We request comment on the notion of defining universal service in terms of a network connection. Would such an approach effectively spur deployment of an advanced telecommunications infrastructure? Would it give all sectors of society a chance to participate in the information revolution? If this approach were adopted, what sort of connection should be specified (*e.g.*, in terms of capacity, transmission speed, signalling, etc.)?

31. The notion of defining universal service as customer access to a telecommunications network raises the issue of access to the Internet, which began in 1969 as a Pentagon experiment to aid researchers in trading information by computer. Today the Internet is a worldwide network linking over 21,000 separately administered computer networks. Each computer network connects tens of thousands of computers with ten million users in the United States and fifteen million users in sixty countries around the world.[44] One observer recently asserted:

> Not knowing how to use the Internet will be as grave a deficiency as not knowing how to read. The Internet will become the world's primary means of communication and will soon carry more mail than the entire postal service worldwide.[45]

If universal service is defined in terms of a network connection, should that connection provide access to the Internet?

32. Another important area of inquiry is the extent to which universal service policy should address customer premises equipment (CPE). Without adequate equipment on the customer's premises, network connection and the many services it affords is meaningless. CPE capable of providing access to advanced services may be expensive at market prices, however, and thus could serve as a barrier to the availability of advanced services. For the same reason, however, subsidizing CPE as part of universal service could be expensive, possibly prohibitively so.

Including CPE in the definition of universal service could also reverse the government's existing regulatory approach toward CPE, which is now deregulated and subject only to market

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[38] ASCII is a uniform code used in computer and data communications systems. It employs seven binary digits (bits) to represent a specific set of letters, numbers, punctuation and special characters, plus a parity bit used in checking for transmission errors.

[39] Comments of KNME–TV (Channel 5); Prodigy Services Co.; University of New Mexico, Department of Engineering; Alliance for Community Media; Virtual City Network Project; Citizens Action Coalition of Indiana; Casey Luna, Lt. Governor, State of New Mexico; Valley Telephone; Chinese for Affirmative Action; State Senator Douglas Hunt, Indiana. *Cf.* Comments of The National Regulatory Research Institute; Hudson Institute, and GTE East Area Telephone Operations.

[40] Mellman Lazarus Lake, *What People Think About New Communications Technologies*, Communications Policy Briefing 2, at 4 (Benton Foundation 1994).

[41] Defining universal service to include certain services may also raise constitutional and regulatory issues. For example, government designation of certain information services as part of a universal service package could be challenged as violative of the First Amendment on the ground that it compels providers to "speak" or because it discriminates against other information services. Moreover, inclusion of information services within a redefined universal service could lead to regulation of currently unregulated services. We seek comment on these issues as well.

[42] *See, e.g.*, Comments of Neil Pickett, Director of Research and Programs, the Hudson Institute, Indianapolis field hearing.

[43] *Cf.* S. 1822, 103d Cong., 2d Sess. § 102(a) (1994), which would add a new section 201A(b) to the Communications Act requiring the FCC to incorporate within universal service "any telecommunications and information services which . . . have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers."

[44] *About the Internet*, The InfoLetter: A Monthly Roadmap to the Information Superhighway, May 1994, at 5. Parts of the Internet are growing at an exponential rate of 15 percent per month. *See* Testimony of Dr. Vinton G. Cerf, President, Internet Society, before the House Science Committee, March 22, 1994.

[45] Mark Gibbs, *Internet ABCs Essential*, Investor's Business Daily, Apr. 14, 1994, at 4.

forces.[46] Local exchange carriers may provide CPE in conjunction with local telephone service, subject to certain safeguards. In addition, at present, computer manufacturers, set-top box manufacturers, and television manufacturers are competing to develop the product or products that could be used for receiving advanced services. It is thus not clear which equipment the government should specify, if any, and on what basis it should choose. Moreover, government selection of a certain type of CPE for inclusion within the universal service definition carries with it the risk of government picking winners and losers, a questionable strategy.

33. We seek comment on whether CPE should be included in the new definition of universal service, and, if so, whether a category of providers should be obligated to supply it. Should the Government identify specific equipment or merely capabilities if it is included in the definition? What other alternative approaches could be adopted, e.g., such as a voucher system, which would assure that all consumers could purchase the type of CPE they desire from the provider of their choice without government specification?

IV. Funding Universal Service in a Competitive Environment

34. Today, most experts agree that current pricing policies support universal service by generating subsidies that reduce the costs of providing POTS in particular areas and make service more affordable for certain groups of customers. By and large, such subsidies have been internally generated—*i.e.*, created by setting the pricing of certain services above the costs of providing them—rather than funded by external sources, such as taxes.[47] The growth of competition, which to some extent reduces the need for subsidies and is by no means incompatible with universal service, does put pressure on existing funding mechanisms. Above-cost pricing creates market opportunities for new entrants. New entry, in turn, drives prices towards costs, in the process, eliminating excess revenues that were available, prior to competitive entry, to subsidize universal services like POTS. The challenge for policymakers is to develop funding mechanisms that help achieve universal service goals, but are sustainable in a competitive environment.

35. While there is widespread agreement that competition is putting pressure on existing mechanisms for funding universal service, there is no consensus on the amount of subsidies at risk.[48] Thus, a study sponsored by the United States Telephone Association concluded that interexchange access and toll services provided by local exchange telephone companies (LECs) are priced to produce approximately $20 billion of contribution in excess of their long-run incremental costs.[49] Those additional revenues are presumably needed to fund universal service. Teleport Communications Group (Teleport), a major provider of competitive local telecommunications services, disputes this claim, contending that only $400 million of the LECs' $86 billion in annual revenues goes toward subsidizing rates for basic telephone service.[50] A study done for MCI estimated that the subsidy is about $3.7 billion when basic service costs are examined and extraneous LEC revenue requirements are subtracted.[51] Finally, the Consumer Federation of America alleges that, far from requiring support from other services, local telephone service produces net income for the LECs in the amount of five to ten dollars per month.[52]

36. We ask for comments on the amount of the subsidy today and the basis for the estimates. What methodologies were used to derive the estimates cited, and what are the strengths and weaknesses of each approach? What data sources are available on which to base the estimates? What are the implications of universal service subsidies in terms of market inefficiencies and the positive "externalities" generated by the addition of subscribers to the network? With respect to a system of subsidies, is there a threshold point at which the net positive benefits to society are maximized?

37. There is a similar lack of agreement concerning possible new mechanisms for funding universal service, although certain themes have begun to emerge. The debate overwhelmingly centers on the sources and distribution of the funding, since most parties appear to agree that some form of universal service support should be continued.[53] The following discussion highlights some of the proposals that are currently under discussion.

A. Sources of Contribution

38. Many proposals focusing on potential funding sources look to service providers as a source of subsidies. For example, NARUC's Universal Service Project Group contends that as markets continue to evolve toward competition, all service providers that deliver services over the public switched network should be required to contribute proportionally to the universal service support mechanisms, including enhanced service providers.[54] Metropolitan Fiber Systems (MFS), another provider of competitive local telecommunications services, would require contributions from all providers of telecommunications services.[55]

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[46] Although CPE was detariffed and generally deregulated in the early 1980s, the FCC still requires registration of this equipment to ensure that its connection does not cause harm to the public switched network. *See* 47 CFR part 68 (1994).

[47] Thus, for example, rates for the local telephone facilities used to originate and terminate long distance services—so-called access facilities—have been set above cost to subsidize local telephone rates. Long distance service providers pass those access costs through to subscribers. *See, e.g., Infrastructure Report, supra* note 15, at 290–291. Local service rates for business customers typically exceed relevant costs to provide support for local service to residential users. *See, e.g.*, Bruce Egan and Steven Wildman, *Funding the Public Telecommunications Infrastructure* 7 (unpublished paper presented at a conference sponsored by The Benton Foundation and The Columbia Institute for Tele-Information, Washington, DC., Oct. 15, 1993) (Egan and Wildman). Finally, the common regulatory practice of requiring uniform rates throughout a geographic area—so-called "geographic rate averaging"—may result in above-cost rates for some customers and below cost rates for others. *See, e.g.*, David Kaserman and John Mayo, *Telecommunications Cross-Subsidies*, 11 Yale J. on Reg. 119, 130 (1994).

Although internally generated subsidies are widely used to fund universal service, they are not the only mechanisms. For example, subsidies to fund 911 emergency services and services for the hearing impaired increasingly are generated directly through a separate charge on each subscriber's bills. *See* Egan and Wildman, *supra*, at 7.

[48] To the extent that universal service is redefined to include additional services and features, the costs (and associated subsidies) of making that new package of services universally available would likely increase above current levels.

[49] Calvin S. Monson and Jeffrey H. Rohlfs, Strategic Policy Research, *The $20 Billion Impact of Local Competition in Telecommunications* 2,3 (issued July 16, 1993).

[50] Teleport Communications Group, *What $20 Billion Impact? A Reply to USTA* (issued Aug. 10, 1993).

[51] *See* Hatfield Associates, Inc., *The Cost of Basic Universal Service* 4 (July 1994).

[52] *See* Dr. Mark Cooper, Consumer Federation of America *Local Exchange Costs and the Need for a Universal Service Fund: A Consumer View* 1 (May 1994).

[53] During the five NII field hearings on universal service and open access, numerous witnesses set forth proposals relating to funding sources and distribution. See *NII Field Hearings*, pp. 9–10.

[54] NARUC Universal Service Project, NARUC Committee on Communications, Presentation of Staff Position Statement, NARUC Summer Meetings (San Diego, California) (July 25, 1994); Universal Service Project, NARUC Subcommittee on Communications, Staff Draft Position Statement on Universal Service Principles, 22 (June 27, 1994) (Staff Draft Position Paper).

[55] *See e.g., Inquiry into Policies and Programs to Assure Universal Telephone Service in a*

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Teleport, on the other hand, suggests that all common carriers providing facilities-based, two-way telecommunications contribute to funding universal service.[56] Professor Eli Noam has developed a plan under which all entities providing "transmission path services" to third parties for compensation would pay a proportionate share, based on revenues, toward universal service funding.[57]

39. We request comment on these and other mechanisms for generating funds to support universal service. What are the advantages and disadvantages of deriving universal service support funding from service providers? What criteria should be used to determine which service providers should be required to contribute to universal service funding? Should contributions be required only from facilities-based service providers and, if so, why? If contributions are to be required from non-facilities based service providers (*e.g.*, resellers, enhanced service providers), do steps have to be taken to prevent double payment? How can the contribution scheme be structured so as to minimize adverse effects on competition?[58] Finally, should we keep any of the existing funding mechanisms?

40. Some have suggested public funding as an alternative to obtaining universal service funding from service providers. For example, Professor Noam lists a variety of tax measures that could be used to fund universal service (*e.g.*, general tax revenues, a telecommunications sales tax, a tax on telecommunications equipment, or a property tax on carriers), while pointing to problems with each.[59] Some witnesses at the NTIA field hearings asserted that subsidies should be generated from tax-based funding under ideal circumstances, with a sectoral levy on telecommunications as a second best option.[60] Finally, at NTIA's Indianapolis hearing, an executive of Procter and Gamble suggested that commercial advertising on the NII could be an alternative mechanism for funding universal service objectives.[61]

41. We request comment on the advantages and disadvantages of using public funding to advance universal service goals. While that approach would be competitively neutral, public funding would represent a sharp departure from current funding policies and would likely encounter stiff opposition, given the Federal deficit and other budget priorities. We also seek comment on the efficacy of advertising as a vehicle for funding universal service in the 21st century.

B. Distribution of Subsidies

42. The other facet of universal service funding concerns the distribution of subsidies. Currently, universal service support is provided in both targeted and untargeted fashions. As noted above, government regulators historically have mandated above-cost prices for certain services to reduce rates for residential POTS. This approach, however, effectively subsidizes all residential customers, including those who would be willing and able to pay cost-based rates for telephone service. Similarly, regulators have also directed subsidies towards high cost areas to ensure affordable POTS in those areas.[62] Once again, this approach benefits all households in high cost areas, whether or not they are low income or would terminate telephone service if faced with cost-based rates.

43. Recently, government regulators have developed more carefully targeted funding programs. For example, the FCC's Link-Up America program allows States to reduce telephone installation charges for qualified households by as much as $30, as well as to use installment payments for installation charges without any interest charges to the customer. To date, forty-eight states and the District of Columbia have implemented Link-Up America programs. Funding of the program this year will be approximately $15.9 million. Under the FCC's Lifeline program, started in 1985, the FCC matches State rate discounts to eligible subscribers (up to the maximum Federally-mandated subscriber line charge of $3.50 per month). Thirty-five states and the District of Columbia have implemented some form of Lifeline assistance, at a projected cost of some $119 million in 1994.

44. Most experts contend that universal support should be provided only to those subscribers who could not otherwise afford telephone service. Some argue for targeting subsidies to low income users, high cost areas, and special needs groups.[63] NARUC's Universal Service Project recommends continuing some support mechanisms in place today, including targeted support in low cost areas and direct assistance to end users through Lifeline and Link-up programs.[64] Others also support some form of lifeline option to assist low income customers while avoiding subsidizing every household.[65]

45. We seek comment on how best to target universal support funding. What criteria should be established to identify those eligible for subsidies? Should eligibility for support be linked to the eligibility standards associated with other social "safety net" programs. Should support be structured so that some defined package of telecommunications services consumes no more than a specified percentage of a household's annual income, or represents no more than a designated

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Competitive Market Environment, Petition of MFS Communications Company, Inc. for a Notice of Inquiry and *En Banc* Hearing, at 5 (filed Nov. 1, 1993) (Petition of MFS).

[56] Comments of Michael A. Morris, Western Regional Director, Regulatory and External Affairs, Teleport Communications Group, Transcript of Los Angeles Hearing at 223 (Feb. 16, 1994).

[57] Eli M. Noam, *NetTrans Accounts: Reforming the Financial Support System for Universal Service in Telecommunications* (Sept. 1993) (unpublished paper) (Noam). His scheme would apply to all facilities-based two way transmission carriers regulated by the FCC under Title II, including local exchange carriers, interexchange carriers, cellular carriers, competitive access providers, and satellite carriers. He would exclude enhanced service providers, information providers, resellers, private networks, equipment manufacturers, and cable and broadcast operators. A system of credits and debits would be used to determine amounts owed and transfers would only be made in the event of a difference owing between providers. He would begin this program at the same time that local competition would be fully permitted, with full interconnection and collocation rights. He indicates that his proposal could be implemented under existing mechanisms.

[58] For example, MFS suggests that universal service obligations be determined annually, based on competitively neutral criteria, such as percentage of revenues or a fixed amount per access line. *See* Petition of MFS, *supra* note 55, at 19.

[59] Noam, *supra* note 57, at 17–20.

[60] Comments of Barbara A. Cherry, Ameritech 2 (Indianapolis hearing); Transcript of Los Angeles hearing at 207 (Comments of Timothy J. McCallion, West Area Vice President—Regulatory, GTE). A State regulatory official testifying at the New Mexico field hearing raised the possibility of using revenues from Federal spectrum auctions to fund universal service objectives. Ken Solomon, Acting Director of Telecommunications, New Mexico State Corporation Commission, New Mexico transcript, at 256.

[61] Comments of Robert Herbold, Senior Vice President, The Proctor & Gamble Company (Indianapolis Field Hearing).

[62] One such subsidy mechanism is the Universal Service Fund (USF) which provides monies to local telephone companies whose "local loop" costs (*i.e.*, the cost of the facility connecting the subscriber's home to the nearest company switching office) are more than 15 percent above the national average. The USF grew from $445 million in 1986 to more than $700 million in 1993, sparking an investigation by a Federal-State Joint Board and the FCC into the causes of its rapid growth. *See also* Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Notice of Inquiry, CC Docket No. 80–286 (released August 30, 1994). Another subsidy mechanism is the Rural Electrification Administration's telephone loan program which, since 1947, has provided low-cost loans directly to rural telephone companies and cooperatives. *See* 7 U.S.C. § 901 *et seq* (1994).

[63] See *NII Field Hearings*, p. 10–11.

[64] Staff Draft Position Paper, *supra* note 54, at 8.

[65] Comments of Charles Smith, Vice President and General Manager, Pacific Bell, Los Angeles region, Transcript of Los Angeles Hearing at 55 (Feb. 16, 1994).

fraction of a household's yearly expenditures?[66] Should subsidies be applied to a limited set of services and, if so, how should that set of services be determined?

46. We also request comment on the current practice of providing support to firms providing service in high cost (predominantly rural) areas. Some have argued that rural telephone companies have higher average costs only if one considers the fixed costs of their telephone networks. When operating expenses (*e.g.*, labor costs, taxes, interest expenses) are factored in, total costs for some rural companies are lower than the costs incurred by companies operating in non-rural areas.[67] Commenters should address these analyses and their implications for universal service policies in rural areas.

47. In a related vein, MFS suggests that subsidies for high cost areas be based on objective criteria such as population density, geography, and other subscriber statistics rather than actual telephone company costs to reduce any incentive of LECs to inflate costs so they can keep receiving subsidies.[68] Is that a viable funding strategy? Would it be more efficient to direct support to rural households, thereby subsidizing only those subscribers who could otherwise not afford telephone service?

48. Finally, we solicit comment on the appropriate recipients of universal service support. As noted above, subsidies are directed towards the providers of telephone service, in return for their commitment to provide below cost service to certain subscribers or in certain areas. Some observers have suggested providing subsidies directly to subscribers, either as a complement to or in place of transfers to carriers. There is growing interest, for example, in a voucher system to allow subsidies to be distributed directly to eligible subscribers who would choose their own providers.[69] Similarly, there is a proposal to give eligible customers credits on their monthly bills to reflect reductions in the price of basic service.[70]

49. Directing support to end users, rather than to carriers, could give customers more control in choosing their providers, while continuing to ensure that all have access to affordable service. It might also stimulate competitive entry in some areas. Others have argued, however, that providing support to subscribers would encourage inefficient entry by new firms, jeopardize incumbent providers' ability to serve remaining customers, and actually increase universal service support requirements.[71]

50. Should universal service support payments be made to service providers, to subscribers, or in some other fashion? Would directing subsidies to carriers encourage inefficient entry in some areas? If so, under what conditions? Could a subscriber-based subsidy program be structured to avoid such problems? How much would such a program cost to establish and operate? If support payments are made to service providers, should they be limited to certain categories of providers, such as "carriers of last resort" (*i.e.*, firms that agree to provide universal services throughout an entire geographic area)? If so, would it be feasible or efficient to designate (and provide subsidy payments to) multiple carriers of last resort in a particular area? What rules should dictate when carriers of last resort can enter or exit geographic areas? What is the most effective way to establish service in currently unserved areas? For example, would it be possible to award a franchise to service an unserved area via competitive bidding? What minimum franchise requirements would be necessary to make such an auction fair and attractive to potential bidders?

C. Transition Measures

51. Establishing a new funding scheme will likely necessitate transitional measures. For example, if any rate rebalancing occurs, it will be necessary to address potential "rate shock" to local ratepayers. One commenter contends that any transition should be aimed at achieving two goals: (1) developing a level playing field for competitors and (2) continuing to protect consumers. Ameritech proposes to use what it calls the "Customers First Plan," based on what Ameritech labels "bulk billing." In effect, Ameritech would collect the necessary subsidy amount by billing long distance carriers according to their share of the total toll revenues reported to the FCC for all of Ameritech's interstate access customers. Ameritech urges this approach as a transition to long-term reform of universal service funding mechanisms.[72] We request comment on this approach, as well as on other transitional proposals. How should these mechanisms be structured so as not to distort competitive markets?

V. Role of the Federal and State Governments in Developing Universal Service Policies

52. Traditionally, FCC and state regulators have worked in tandem to promote universal service goals, but responsibility for defining the precise components of universal service has resided primarily with the States. The telecommunications reform legislation pending in Congress would specify differing degrees of Federal-State cooperation. The Senate bill, S. 1822, would charge the FCC with defining universal service, "based on recommendations from the public, Congress, and the Federal-State Joint Board," although it would authorize the States to prescribe requirements over and above the federally-established minimum as long as such regulations are not inconsistent with those prescribed by the FCC.[73] The House bill, H.R. 3626, would delegate the task to the FCC and the States, based on recommendations from the Joint Board.[74]

53. Similarly, most funding proposals recognize the joint role of the FCC and the states, given the bifurcated regulatory jurisdiction over telecommunications. For example, both bills now pending in Congress, H.R. 3626 and S. 1822, require the involvement of the FCC and the States in determining new universal service funding mechanisms, although the final distribution authority between the two levels of government will turn on the specific legislative language enacted. Many parties stress the need for administration of a funding mechanism by a neutral third party from the private sector.[75]

54. There are numerous arguments for allowing more or less federal or state

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[66] As noted above, telephone service comprised no more than 2.0–2.1% of the average U.S. household's annual expenditures. *See supra* note 26.

[67] *See* Joseph Fuhr, Jr., *Should the U.S. Subsidize Rural Telephone Companies?*, 12 J. of Pol. Analysis and Mgmt 310 (1993); Thomas Armstrong and Joseph Fuhr, Jr., *Cost Considerations for Rural Telephone Service*, 17 Tel. Pol. 80 (1993).

[68] *See* Petition of MFS, *supra* note 55, at Attachment I, p. 4.

[69] Comments of Mark T. Bryant, MCI Telecommunications 13, New Mexico Hearing (Dec. 16, 1993). See also Noam at 36–37.

[70] *See* Petition of MFS, *supra* note 55, at 20. Carriers that provide basic exchange service would grant credits to eligible end users, and these credits would apply against the carriers' universal service obligations.

[71] *See* Panzar and Wildman, *supra* note 21, at 20–25.

[72] *See Petition for a Declaratory Ruling and Related Waivers to Establish a New Regulatory Model for the Ameritech Region*, DA 93–481, Attachments to Ameritech's Reply Comments: Customers First: Ameritech's Advanced Universal Access Plan, Attachment G (filed July 12, 1993).

[73] S. 1822, 103d Cong., 2d Sess. Section 102(a) (1994).

[74] H.R. 3626, 103d Cong., 2d Sess. Section 302 (1994).

[75] See Petition of MFS, *supra* note 55, at 17; See also Comments of Michael Morris, TCG, *supra* note 56, at 222.

authority over universal service policies. Defining universal service on a nationwide basis, for example, could facilitate network planning and service deployment, thereby reducing the total costs to society of implementing universal service. On the other hand, giving individual states flexibility to adopt differing definitions and funding mechanisms, as is the case today, would allow them to craft policies more in line with local conditions. Allowing for state experimentation might also reduce the risks of mandating provision of services either unnecessarily or prematurely, and or leave room for creative funding mechanisms that might reduce the total subsidy requirement. We request comment on the appropriate role of the Federal and State government in defining and funding universal service. What role should be played by the private sector?

VI. Open access for Telecommunications and Information Systems

55. The development and convergence of new telecommunications and information technologies are also leading to changes in the way people think about access to the "network." The concept of "open access" has come to represent technical, regulatory, and empowerment components. This section examines these evolving concepts of open access and the policies that can help make them a reality.

56. Historically, access has focused on issues such as physical access to a seamless and transparent web of monopoly local exchanges, equal access to long distance carriers,[76] and availability to and ease of use by consumers, among others. As a result, any telephone customer can initiate as well as receive phone calls, regardless of the local exchange and long-distance carrier serving the caller and the call recipient. This "open system" that we all take for granted has been achieved through a framework of policies designed to promote interconnection and interoperability, such as expanded interconnection and a uniform system of "addresses" (*i.e.*, telephone numbers).[77]

57. The Administrations's open access goals are broader and more multi-faceted than the traditional approach. In the evolving competitive marketplace, open access will require that multiple telecommunications and information providers as well as users can interconnect transparently and be interoperable. This will in turn promote even more competition among information providers and service options for consumers. Thus, as the NII evolves, the Administration seeks to ensure that consumers and service providers will be able to transfer information across disparate networks easily and accurately, with seamless, interactive, user-driven operations. Also, to be truly useful, an advanced information infrastructure must allow service providers to offer a full range of educational material, health information, and home and business services, and it must make those services truly accessible without unreasonable technical or regulatory barriers, particularly to disabled individuals.[78]

58. We solicit comments on how open access should be defined at this time. How should an open access policy be shaped to accommodate the changing needs of our information society? What impact will open access have on competition and ultimately on the extent of the need for universal service regulation? How can policymakers ensure that the NII fulfills its promise for education, economic growth and job creation? How will the new entrants in the market affect open access? What steps can be taken to facilitate or ensure access by Americans with disabilities?

59. The Administration also envisions open access to a two-way system of broadband communications as a means of individual empowerment. The idea is that improved access to information will build and promote the values of democracy.[79] Open access in this new environment creates opportunities for potential service providers as well as users to be providers of information, thereby promoting an enhanced concept of community involvement and competition in the free flow of ideas. Thus, open access to the NII could spur development of community-driven grass-roots networks or "electronic commons." In addition, the NII will enhance the ability of the Federal government and state and local governments to deliver information and services to citizens more effectively, and for citizens to communicate their views on legislation and policy initiatives back to government officials just as easily

60. How can the "electronic communities" envisioned by the Administration be fostered? How can access to the NII be assured for individuals, small and large businesses, non-profit institutions (in particular, schools, libraries and health care facilities) and state and local governments? How can access be assured in rural areas? Should there be different access opportunities and prices for profit and non-profit entities? Large and small entities? How can society ensure that our citizens are sufficiently "computer literate" to utilize the NII?

61. The critical question facing policymakers is how to ensure open access to the NII.[80] NTIA's field hearings revealed a general consensus among witnesses that significant issues such as interconnection,[81] interoperability and standard open interfaces,[82] and reasonable prices and tariffs[83] need to be addressed before open access can be assured.[84]

62. The NII will integrate and build upon many different hardware and software components, some of which already exist and many of which are

[76] Equal access for long-distance carriers has not yet been fully achieved for all local exchange carriers or for non-BOC cellular operators.

[77] In contrast, cable television franchises are not interconnected with other networks. Each customer is served by a local provider who provides access solely to the services that cable operator wishes to provide and the set-top box is principally a receive-only device. In the cable context, access generally refers to customer access to cable service (measured in homes passed) and to carriage requirements imposed on cable providers such as Public, Education and Government channels, leased access, and must carry channels.

[78] *See generally Agenda for Action, supra* note 8.

[79] *Id.* at 49,029.

[80] The telecommunications reform bills being considered by the 103rd Congress contain numerous provisions to promote open access. These include, for example, requirements for interconnection capability among telecommunications carriers; non-discriminatory access to network facilities, services, functions and information on an unbundled basis under certain conditions; the development of interconnection standards; joint planning among telecommunications and information service providers for interoperability of private and public networks; the elimination of restrictions on resale or sharing of network facilities and services; and the provision of advanced services, possibly with preferential rates, to various governmental and non-profit institutions. The nature and extent of these provisions will depend on final passage of telecommunications reform legislation in Congress and implementation actions by the FCC.

[81] *See* Comments of *The News & Observer*; North Carolina State University; M. Strata Rose, Virtual City Network Project; and NC Electronics & Information Technologies Association.

[82] Comments of NC Rural Economic Development Center; First Pacific Networks; Prodigy Services Company; SAGRELTO Enterprises; GTE West Area Telephone Operations; Pacific Bell; Virtual Valley Inc.; Multimedia Design Corporation; Adamation, Inc.; MCNC; and State of New Mexico, GSD/ISD Office of Communications.

[83] Comments of First Pacific Networks; Prodigy Services Company; Adamation, Inc.; Communications Resources, Inc.; Hooked, Inc.; and NC Electronics & Information Technologies Association.

[84] A number of commenters also noted that resolving security, privacy, and intellectual property issues over the NII is also critical. The Administration is currently addressing these issues through several IITF committees and working groups. These include the NII Security Issues Forum, the Network Reliability and Vulnerability Working Group, and the Privacy Working Group.

still in development. These components must be interoperable, i.e., able to work together. Interoperable components would allow distinct networks to communicate with each other and allows users to access various products and services through standard software and hardware.[85] An NII comprised of interoperable networks will create an infrastructure that is accessible to all providers and users.[86] What critical points in today's infrastructure must be interoperable if the NII vision is to be successfully implemented? What role, if any, should open or standard interfaces and protocols play? What role can government play in facilitating interoperability, both in the short term (*e.g.*, two years) and in the long term.

63. Interoperability can be accomplished in a number of different ways. Equipment can have open protocols and interfaces that permit a physical connection (as is the case of a plug and socket) or logical connection (message format and exchange procedure).[87] Equipment built with open architecture will also permit interoperability. Additionally, standards for voice, video, data and multi-media services are also crucial to interoperability.[88]

64. While there have been times when the U.S. government has promoted particular standards, industry adoption of voluntary standards, working with government officials, is now the norm. Various commenters have argued that either approach can be too slow given the fast pace of change in the industry. In addition, some argue that the industry standard-setting process is costly and requires large amounts of employee time, which creates hardships for smaller companies.

65. How should standards develop for the NII? Do standards affect the ability to innovate? How can standards be developed that are flexible and adaptable enough to meet user needs at affordable costs? If voluntary, industry-set standards are the favored approach, what procedures should be followed in establishing standards, and what fora should be used? What role, if any, should the government play?

66. Competition is one of several means of ensuring that innovation and the provision of information and transport services will flourish on the NII. At the same time, there is a recognized need for government intervention in the case of market failures, for example, to protect new entrants from the market power of incumbent operators when necessary. Will greater competition in information and transport markets alone be sufficient to achieve open access goals? If not, what other actions are necessary? What regulations or policies need to be in place to guarantee reasonable and nondiscriminatory interconnection and reasonable cost-based pricing and tariffs for the NII? What technical or regulatory barriers must be overcome?

VII. Conclusion

67. NTIA hereby requests comments in this inquiry to be filed on or before December 14, 1994.

Dated: September 13, 1994.

Larry Irving,

Assistant Secretary of Commerce for Communications and Information.

[FR Doc. 94–23033 Filed 9–14–94; 8:45 am]

BILLING CODE 3510–60–P

[85] Computer Systems Policy Project *Perspectives on the National Information Infrastructure: Ensuring Interoperability* 5 (Feb. 1944). Familiar examples of interoperability include standard size nuts and bolts, telephone jacks and telephones, and computers and modems.

[86] Many believe that the Internet is an excellent model for such interoperability, since it allows users all over the world to access information and talk to each other easily over the network. We request comments on whether the Internet is, indeed, a good model for interoperability for the NII.

[87] Protocols are the set of rules governing the operation of functional units of a communication system that make communication possible. Open interfaces are specifications for interconnection compatibility made available to all vendors.

[88] *See, e.g.*, Comments of Alan R. Blatecky, Vice President, Information Technologies, MCNC, North Carolina Hearing (Apr. 27, 1994). "It is essential to have regulatory guidelines which ensure interoperability across networks through the rapid adoption and encouragement of open standards. If standards are not adopted, the marketplace becomes a battleground for proprietary solutions which penalize users until one of the standards finally become[s] a de facto standard." *Id.* at 2.

federal register

Monday
September 19, 1994

Part IV

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

September 1, 1994.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a month report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status of 65 rescission proposals and 12 deferrals contained in six special messages for FY 1994. These messages were transmitted to Congress on October 13, November 1, and November 19, 1993; and on February 7, May 2, and June 8, 1994.

Rescissions (Attachments A and C)

As of September 1, 1994, 65 rescission proposals totaling $3,172.2 million had been transmitted to the Congress. Congress approved 45 of the Administration's rescission proposals in P.L. 103–211. A total of $1,286.7 million of the rescissions proposed by the President was rescinded by that measure. There are no rescission proposals pending before the Congress. Attachment C shows the status of the FY 1994 rescission proposals.

Deferrals (Attachments B and D)

As of September 1, 1994, $1,199.6 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1994.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the **Federal Register** cited below:

58 FR 54256, Wednesday, October 20, 1993
58 FR 59517, Tuesday, November 9, 1993
58 FR 63264, Tuesday, November 30, 1993
59 FR 7122, Monday, February 14, 1994
59 FR 24006, Monday, May 9, 1994
59 FR 32068, Tuesday, June 21, 1994

Alice M. Rivlin,

Acting Director.

BILLING CODE 3110–01–M

ATTACHMENT A

STATUS OF FY 1994 RESCISSIONS

	Amounts (In millions of dollars)
Rescissions proposed by the President.....	3,172.2
Rejected by the Congress.....	-1,885.5
Amounts rescinded by P.L. 103-211, the FY 1994 Emergency Supplemental Appropriations Act.....	-1,286.7
Currently before the Congress.....	0.0

ATTACHMENT B

STATUS OF FY 1994 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	8,625.8
Routine Executive releases through September 1, 1994 (OMB/Agency release of $7,426.9 million, partially offset by cumulative positive adjustment of $643 thousand.)	-7,426.2
Overturned by the Congress.....	---
Currently before the Congress.....	1,199.6

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of September 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
FUNDS APPROPRIATED TO THE PRESIDENT								
International Security Assistance								
Foreign military financing grants	R94-1		40,000	11-1-93	*			
	R94-1A		25,562	2-7-94	*		65,562	P.L. 103-211
Economic support fund	R94-2		90,000	11-1-93	*		61,350	P.L. 103-211
Military assistance	R94-38		438	2-7-94	*		438	P.L. 103-211
Agency for International Development								
Development assistance fund	R94-3		160,000	11-1-93	*		104,019	P.L. 103-211
DEPARTMENT OF AGRICULTURE								
Agricultural Research Service								
Agricultural Research Service	R94-4		16,233	11-1-93	16,233	3-4-94		
Buildings and facilities	R94-5		8,460	11-1-93	8,460	3-4-94		
Cooperative State Research Service								
Cooperative State Research Service	R94-6		30,002	11-1-93	24,268	3-4-94	5,734	P.L. 103-211
Buildings and facilities	R94-7		34,000	11-1-93	31,103	3-4-94	2,897	P.L. 103-211
Agricultural Stabilization and Conservation Service								
Salaries and expenses	R94-8		12,167	11-1-93	12,167	3-1-94		
Soil Conservation Service								
Conservation operations	R94-9		12,167	11-1-93	12,167	3-1-94		
Farmers Home Administration								
Salaries and expenses	R94-10		12,167	11-1-93			12,167	P.L. 103-211

* Funds were never withheld from obligation.

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of September 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Rural Development Administration and Farmers Home Administration								
Rural housing insurance fund program account	R94-41		15,645	2-7-94			15,645	P.L. 103-211
Agricultural credit insurance fund program account	R94-39		5,094	2-7-94			5,094	P.L. 103-211
Rural Electrification Administration								
Rural electrification and telephone loans program account	R94-11		6,445	11-1-93	6,445	3-1-94		
	R94-40		5,688	2-7-94	2,383	3-1-94	3,305	P.L. 103-211
Food and Nutrition Service								
Commodity supplemental food program	R94-12		12,600	11-1-93	2,600	3-1-94	10,000	P.L. 03-211
Foreign Assistance Programs								
Public Law 480 grants - Titles I (OFD), II, and III	R94-42		49,600	2-7-94	20,000	4-29-94	29,600	P.L. 103-211
Public Law 480 program account	R94-43		35,400	2-7-94	12,500	3-14-94	22,900	P.L. 103-211
DEPARTMENT OF COMMERCE								
National Oceanic and Atmospheric Administration								
Operations, research, and facilities	R94-13		6,000	11-1-93	6,000	3-1-94		
Construction	R94-14		4,000	11-1-93	1,000	3-1-94	3,000	P.L. 103-211
International Trade Administration								
Operations and administration	R94-15		2,000	11-1-93			2,000	P.L. 103-211
DEPARTMENT OF DEFENSE								
Procurement								
Missile procurement, Army	R94-44		48,000	2-7-94	48,000	3-24-94		
Aircraft procurement, Navy	R94-45		51,700	2-7-94	41,700	3-17-94	10,000	P.L. 103-211

* Funds were never withheld from obligation.

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of September 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Shipbuilding and conversion, Navy	R94-46		50,000	2-7-94	50,000	3-25-94		
Aircraft procurement, Air Force	R94-47		105,600	2-7-94	92,800	3-30-94	12,800	P.L. 103-211
Research, Development, Test, and Evaluation								
Research, development, test, and evaluation, Defense-wide	R94-48		50,000	2-7-94	40,000	3-26-94	10,000	P.L. 103-211
Military Construction								
Military construction, Army	R94-16		116,134	11-1-93	93,815	3-1-94	22,319	P.L. 103-211
Military construction, Air Force	R94-17		85,094	11-1-93	60,307	3-1-94	24,787	P.L. 103-211
Military construction, Army Reserve	R94-18		19,807	11-1-93	17,256	3-1-94	2,551	P.L. 103-211
Military construction, Naval Reserve	R94-19		4,438	11-1-93	3,812	3-1-94	626	P.L. 103-211
Military construction, Air Force Reserve	R94-20		18,759	11-1-93	16,897	3-1-94	1,862	P.L. 103-211
Military construction, Army National Guard	R94-21		251,854	11-1-93	244,286	3-1-94	7,568	P.L. 103-211
Military construction, Air National Guard	R94-22		105,138	11-1-93	98,951	3-1-94	6,187	P.L. 103-211
DEPARTMENT OF THE ARMY-CIVIL								
Army Corps of Engineers								
General investigations	R94-23		24,970	11-1-93	24,970	3-1-94		
Construction, general	R94-24		97,319	11-1-93	97,319	3-1-94		
DEPARTMENT OF ENERGY								
Energy Programs								
Energy supply, research and development activities	R94-25		97,300	11-1-93	97,300	3-1-94		
	R94-49		10,000	2-7-94			10,000	P.L. 103-211
Uranium supply and enrichment activities	R94-25		42,000	11-1-93			42,000	P.L. 103-211

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of September 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R94-26		180,000	11-1-93	180,000	3-1-94		
Homeownership and opportunity for people everywhere grants (HOPE grants)	R94-50		66,000	2-7-94			66,000	P.L. 103-211
DEPARTMENT OF INTERIOR								
Bureau of Reclamation								
Construction	R94-27		16,000	11-1-93	16,000	3-4-94		
DEPARTMENT OF STATE								
Administration of Foreign Affairs								
Salaries and expenses	R94-28		600	11-1-93	600	2-28-94		
Buying power maintenance	R94-51		8,800	2-7-94			8,800	P.L. 103-211
DEPARTMENT OF TRANSPORTATION								
Federal Aviation Administration								
Operations	R94-29		2,750	11-1-93	2,000	3-1-94	750	P.L. 103-211
Facilities and equipment	R94-30		40,257	11-1-93			40,257	P.L. 103-211
Grants-in-aid for airports (Airport and airway trust fund)	R94-56		488,200	2-7-94			488,200	P.L. 103-211
Federal Transit Administration								
Discretionary grants	R94-31		52,037	11-1-93	51,228	3-1-94	809	P.L. 103-211
Federal Highway Administration								
Highway demonstration projects	R94-32		187,827	11-1-93	12,858	1-28-94		
	R94-32A		-12,858	2-7-94	174,969	2-28-94		

* Funds were never withheld from obligation.

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of September 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Federal Railroad Administration								
Railroad research and development	R94-55		17,000	2-7-94			17,000	P.L. 103-211
Coast Guard								
Operating expenses	R94-57		5,000	2-7-94	5,000	4-18-94		
Acquisition, construction, and improvements	R94-58		2,000	2-7-94	2,000	4-18-94		
Office of the Secretary								
Rental payments	R94-59		1,781	2-7-94			1,781	P.L. 103-211
Payments to air carriers (Airport and airway trust fund)	R94-60		10,067	2-7-94			10,067	P.L. 103-211
DEPARTMENT OF THE TREASURY								
Financial Management Service								
Biomass energy development	R94-61		16,275	2-7-94			16,275	P.L. 103-211
GENERAL SERVICES ADMINISTRATION								
Public Buildings Service								
Federal buildings fund	R94-33		126,022	11-1-93	126,022	3-1-94		
	R94-33A		1,669	2-7-94	1,669	3-15-94		
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Research and development	R94-62		88,000	2-7-94	25,000	2-29-94	63,000	P.L. 103-211
Space flight, control, and data communications	R94-63		32,000	2-7-94			32,000	P.L. 103-211
Construction of facilities	R94-64		25,000	2-7-94			25,000	P.L. 103-211
SMALL BUSINESS ADMINISTRATION								
Salaries and expenses	R94-34		13,100	11-1-93	13,100	3-1-94		

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of September 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
OTHER INDEPENDENT AGENCIES								
Board for International Broadcasting								
Israel relay station	R94-65		1,700	2-7-94			1,700	P.L. 103-211
National Science Foundation								
Academic research infrastructure	R94-66		10,000	2-7-94	5,000	3-7-94	5,000	P.L. 103-211
Nuclear Regulatory Commission								
Salaries and expenses	R94-67		12,700	2-7-94			12,700	P.L. 103-211
State Justice Institute								
Salaries and expenses	R94-35		6,775	11-1-93				
United States Information Agency								
Salaries and expenses	R94-36		3,000	11-1-93	1,000	3-1-94	2,000	P.L. 103-211
North/South Center	R94-37		8,700	11-1-93	7,700	3-1-94	1,000	P.L. 103-211
TOTAL RESCISSIONS		**0**	**3,172,183**		**1,806,885**		**1,286,750**	

* Funds were never withheld from obligation.

ATTACHMENT D
Status of FY 1994 Deferrals - As of September 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 9-1-94
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D94-1	394,175		10-13-93					
	D94-1A		1,164,562	11-19-93					
	D94-1B		23,725	2-7-94	1,210,284			452	372,630
Foreign military financing grants	D94-9	3,137,279		11-19-93	3,123,533				13,746
Foreign military financing program account	D94-10	46,530		11-19-93	38,118				8,412
Agency for International Development									
Demobilization and transition fund	D94-2	8,000		10-13-93					8,000
International disaster assistance, executive	D94-11	118,059		11-19-93	115,147			191	3,103
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work	D94-3	461,639		10-13-93					
	D94-3A		45,102	6-8-94					506,741
Expenses, brush disposal	D94-4	40,195		10-13-93					
	D94-4A		8,230	6-8-94					48,425
Timber salvage sales	D94-5	256,897		10-13-93	52,483				204,414
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D94-6	1,852		10-13-93	390				1,462
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D94-7	7,317		10-13-93					
			2	5-2-94					7,319

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ATTACHMENT D
Status of FY 1994 Deferrals - As of September 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 9-1-94
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund	D94-8	27,100		10-13-93					
	D94-8A		49,261	11-19-93	51,061				25,300
GENERAL SERVICES ADMINISTRATION									
Public Buildings Service									
Public buildings fund	D94-12	2,835,860		11-19-93	2,835,860				0
TOTAL, DEFERRALS		**7,334,903**	**1,290,883**		**7,426,876**	**0**		**643**	**1,199,552**

federal register

Monday
September 19, 1994

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status and Withdrawal of Proposal to Give Endangered Status; Final Rule and Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Conservancy Fairy Shrimp, Longhorn Fairy Shrimp, and the Vernal Pool Tadpole Shrimp; and Threatened Status for the Vernal Pool Fairy Shrimp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act) for the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and the vernal pool tadpole shrimp (*Lepidurus packardi*); and threatened status for the vernal pool fairy shrimp (*Branchinecta lynchi*). These four invertebrate species are restricted to vernal pools in the State of California and are in danger of extinction principally as the result of urban development, conversion of native habitats to agriculture, and stochastic (random) extinction by virtue of the small isolated nature of many of the remaining populations. This rule implements Federal protection and recovery provisions afforded by the Act for all of these animals.

One species, the California linderiella (*Linderiella occidentalis*), which had been proposed for listing with the above species, has been withdrawn. Additional information that has become available to the Service since the publication of the proposed rule reveals that this species is more abundant than previously known. The Service has considered the additional information and has determined that the California linderiella is not likely to become either endangered or threatened throughout all or a significant portion of its range in the foreseeable future, and it does not qualify for listing under the Act. A notice withdrawing the proposal is published in the **Federal Register** concurrently with this final rule.

EFFECTIVE DATE: September 19, 1994.

ADDRESSES: The complete file for this final rule is available for public inspection, by appointment, during normal business hours at the Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way Room E–1823, Sacramento, California 95825–1846.

FOR FURTHER INFORMATION CONTACT: Chris Nagano or Jim Browning at the above address or by telephone (916/978–4866).

SUPPLEMENTARY INFORMATION:

Background

The Conservancy fairy shrimp, longhorn fairy shrimp, and the vernal pool fairy shrimp are members of the aquatic crustacean order Anostraca. The vernal pool tadpole shrimp is a member of the aquatic crustacean order Notostraca. They are endemic to vernal pools in the Central Valley, coast ranges, and a limited number of sites in the Transverse Range and Santa Rosa Plateau of California.

The three fairy shrimp and the vernal pool tadpole shrimp live in vernal pools, an ephemeral freshwater habitat. None are known to occur in riverine waters, marine waters, or other permanent bodies of water. They are ecologically dependent on seasonal fluctuations in their habitat, such as absence or presence of water during specific times of the year, duration of inundation, and other environmental factors that include specific salinity, conductivity, dissolved solids, and pH levels. Water chemistry is one of the most important factors in determining the distribution of fairy shrimp and tadpole shrimp (Belk 1977; Jamie King, University of California, *in litt.*, 1992; Marie Simovich, University of San Diego, *in litt.*, 1992). The four species included in this final rule are sporadic in their distribution, often inhabiting only one or a few pools in otherwise more widespread vernal pool complexes (Larry Eng, California Department of Fish and Game, pers. comm., 1990; Jamie King, *in litt.*, 1992; Marie Simovich, *in litt.*, 1992; Richard Brusca, San Diego Museum of Natural History, pers. comm., 1992).

Fairy shrimp have delicate elongate bodies, large stalked compound eyes, no carapace, and 11 pairs of swimming legs. They swim or glide gracefully upside down by means of complex beating movements of the legs that pass in a wave-like anterior to posterior direction. Nearly all fairy shrimp feed on algae, bacteria, protozoa, rotifers, and bits of detritus (Pennak 1989). The second pair of antennae in the adult females are cylindrical and elongate, but in the males are greatly enlarged and specialized for clasping the females during copulation. The females carry the eggs in an oval or elongate ventral brood sac. The eggs are either dropped to the pool bottom or remain in the brood sac until the female dies and sinks. The "resting" or "summer" eggs are capable of withstanding heat, cold, and prolonged desiccation. When the pools refill in the same or subsequent seasons some, but not all, of the eggs may hatch. The egg bank in the soil may be comprised of the eggs from several years of breeding (Donald 1983). The eggs hatch when the vernal pools fill with rainwater. The early stages of the fairy shrimp develop rapidly into adults. These non-dormant populations often disappear early in the season long before the vernal pools dry up.

Tadpole shrimp have dorsal compound eyes, a large shield-like carapace that covers most of the body, and a pair of long cercopods at the end of the last abdominal segment (Brusca and Brusca 1991; Pennak 1989; Linder 1952; Longhurst 1955a; Lynch 1966, 1972). They are primarily benthic animals that swim with their legs down. Tadpole shrimp climb or scramble over objects, as well as plow along in bottom sediments. Their diet consists of organic detritus and living organisms, such as fairy shrimp and other invertebrates (Pennak 1989; Fryer 1987). Mating in tadpole shrimp is described by Longhurst (1955b). The females deposit their eggs on vegetation and other objects on the bottom. Vernal pool tadpole shrimp populations pass the dry summer months as diapaused eggs in pool sediments. Some of the eggs hatch as the vernal pools are filled with rainwater in the fall and winter of subsequent seasons.

Vernal pools have a discontinuance occurrence in several regions of California. Generally vernal pool habitat is found west of the Sierra Nevada and extends from southern Oregon into northern Baja, California (Holland and Jain 1977, 1988). Vernal pools form in regions with Mediterranean climates where shallow depressions fill with water during fall and winter rains and then evaporate in the spring (Collie and Lathrop 1976; Holland 1976, 1978; Holland and Jain 1977, 1988; Norwick 1992; Thorne 1984). Overbank flooding from intermittent streams may augment the amount of water in some vernal pools (Hanes *et al.* 1990). Downward percolation is prevented by the presence of an impervious subsurface layer, such as a claypan, hardpan, or volcanic stratum (Holland 1976, 1988). Due to local topography and geology, the pools are usually clustered into pool complexes (Holland and Jain 1988). Pools within a complex typically are separated by distances on the order of meters and may form dense, interconnected mosaics of small pools or a more sparse scattering of larger

pools. Temporary inundation makes vernal pools too wet during the wetted period for adjacent upland plant species adapted to drier soil conditions, while rapid drying during late spring makes pool basins unsuitable for typical marsh or aquatic species that require a more permanent source of water. However, many indigenous plant and aquatic invertebrate species have evolved to occupy the extreme environmental conditions found in vernal pool habitats. Fairy shrimp and tadpole shrimp play an important role in the community ecology of many ephemeral water bodies (R. Brusca, pers. comm., 1992; Loring *et al.* 1988). They are fed upon by waterfowl (Ahl 1991; Driver 1981; Krapu 1974; Swanson *et al.* 1974) and other vertebrates, such as western spadefoot toad (*Scaphiopus hammondi*) tadpoles (M. Simovich, pers. comm., 1991).

The genetic characteristics of the three fairy shrimp and the vernal pool tadpole shrimp, as well as ecological conditions, such as watershed contiguity, indicate that populations of these animals are defined by pool complexes rather than by individual vernal pools (Fugate 1992; J. King, unpubl. data). Therefore, the most accurate indication of the distribution and abundance of the four vernal pool crustaceans is the number of inhabited vernal pool complexes. Individual vernal pools occupied by the four species listed herein are most appropriately referred to as subpopulations.

Urban, water, flood control, highway, and utility projects, as well as conversion of wildlands to agricultural use, have eliminated vernal pools in southern California (Riverside and San Diego Counties), the Central Valley, and San Francisco Bay area (Jones and Stokes Associates 1987). Changes in hydrologic pattern, overgrazing, and off-road vehicle use also imperil this aquatic habitat and the four species listed herein. Human activities that alter the watershed of vernal pools indirectly affect these animals. The flora and fauna in vernal pools or swales can change if the hydrologic regime is altered (Bauder 1986, 1987). Anthropogenic activities that reduce the extent of the watershed or that alter runoff patterns (i.e., amounts and seasonal distribution) may eliminate the animals, reduce their population sizes or reproductive success, or shift the location of sites inhabited by these animals.

According to Holland (1978), there were an estimated 1.7 million hectares (4.2 million acres) in the Central Valley that possibly supported vernal pools at the time Europeans arrived in California. Holland estimated that between 67 and 88 percent of this acreage was destroyed by 1973, largely by human activities (Holland 1978). However, both the acreage of historic vernal pool habitat and estimates of loss determined in this study have been disputed by others. Vernal pools in southern California have been highly impacted by human activities (Zedler 1987). The rate of loss of vernal pool habitat in parts of California has been estimated to occur at approximately 2 or 3 percent per year (Holland 1988).

Discussion of the Four Species

The Conservancy fairy shrimp (*Branchinecta conservatio*), a member of the family Branchinetidae, was described from specimens collected at the Jepson Prairie Preserve, located in the Central Valley east of Travis Air Force Base in Solano County (Eng *et al.* 1990). The animal ranges in size from 14 to 27 millimeters (0.6 to 1.1 inches) long and is most similar in appearance to Lindahl's fairy shrimp (*Branchinecta lindahli*). However, the female brood pouch is fusiform and usually ends under abdominal segment 8 in the Conservancy fairy shrimp, whereas the pouch is cylindrical and usually ends under segment 4 in Lindahl's fairy shrimp. The large, oval pulvillus at the proximal end of the basal segment of the male antenna appears similar in both species, however, the terminal end of the distal antennal segments of the Conservancy fairy shrimp are distinctive (Eng *et al.* 1990).

The Conservancy fairy shrimp inhabits vernal pools with highly turbid water. The species is known from six disjunct populations: Vina Plains, Tehama County; south of Chico, Tehama County; Jepson Prairie, Solano County; Sacramento National Wildlife Refuge, Glenn County (Joe Silviera, U.S. Fish and Wildlife Service, pers. comm., 1993), near Haystack Mountain northeast of Merced in Merced County; and the Lockewood Valley of northern Ventura County (Michael Fugate, University of California at Riverside, pers. comm., 1991). The pools inhabited by the Conservancy fairy shrimp are large, such as the 36 hectare (89 acre) Olcott Lake at Jepson Prairie (Eng, pers. comm., 1990). The Conservancy fairy shrimp has been observed from November to early April. The pools at Jepson Prairie and Vina Plains inhabited by this animal have very low conductivity, total dissolved solids (TDS), and alkalinity (Barclay and Knight 1984; Eng *et al.* 1990). The Conservancy fairy shrimp is usually collected at cool temperatures and appears to be relatively long-lived (Simovich *et al.* 1992; Patton 1984).

The longhorn fairy shrimp (*Branchinecta longiantenna*), a member of the family Branchinectidae, was described from specimens collected at Souza Ranch in the Kellogg Creek watershed, about 35 kilometers (22 miles) southeast of the City of Concord, Contra Costa County (Eng *et al.* 1990). It ranges in size from 12.1 to 20.8 mm (0.5 to 0.8 inches). This species differs from other branchinectids in that a portion of the distal segment of its antennae is flattened in the antero-posterior plane rather than the latero-medial plane.

The longhorn fairy shrimp inhabits clear to turbid grass-bottomed vernal pools in grasslands and clear-water pools in sandstone depressions. This species is known only from four disjunct populations along the eastern margin of the central coast range from Concord, Contra Costa County south to Soda Lake in San Luis Obispo County: the Kellogg Creek watershed, the Altamont Pass area, the western and northern boundaries of Soda Lake on the Carrizo Plain (Eng *et al.* 1990), and Kesterson National Wildlife Refuge in the Central Valley (Dennis Woolington, U.S. Fish and Wildlife Service, *in litt.* 1993). All vernal pools inhabited by this species are filled by winter and spring rains and may remain inundated until June. The longhorn fairy shrimp has been observed from late December until late April. The water is grassland pools inhabited by this species has very low conductivity, TDS, and alkalinity (Eng *et al.* 1990).

The vernal pool fairy shrimp (*Branchinecta lynchi*), a member of the family Branchinectidae, was described from specimens collected at Souza Ranch in the Kellogg Creek watershed, Contra Costa County, California (Eng *et al.* 1990). It ranges in size from 10.9 to 25.0 mm (0.4 to 1.0 inches). This species most resembles the Colorado fairy shrimp (*Branchinecta coloradensis*). There are several differences in the antennae of the males of the two species, including the basal segment outgrowth below and posterior to the pulvillus, which is ridge-like in the vernal pool fairy shrimp but is cylindrical and often much larger in the Colorado fairy shrimp. The shorter brood pouch of the vernal pool fairy shrimp is pyriform, whereas the longer one in the Colorado fairy shrimp is fusiform (Eng *et al.* 1990).

Although the vernal pool fairy shrimp has a relatively wide range, the majority of known populations inhabit vernal pools with clear to tea-colored water, most commonly in grass or mud

bottomed swales, or basalt flow depression pools in unplowed grasslands, but one population occurs in sandstone rock outcrops and another population in alkaline vernal pools. The vernal pool fairy shrimp has been collected from early December to early May. The water in pools inhabited by this species has low TDS, conductivity, alkalinity, and chloride (Collie and Lathrop 1976). This species has a sporadic distribution within vernal pool complexes (Jones and Stokes, 1992, 1993; County of Sacramento 1990; Patton 1984; Stromberg 1993; Sugnet and Associates 1993b) wherein the majority of pools in a given complex typically are not inhabited by the species. Simovich *et al.* (1992) reported that the vernal pool fairy shrimp typically is found at low population densities. Only rarely does the vernal pool fairy shrimp co-occur with other fairy shrimp species, but where it does, the vernal pool fairy shrimp is never the numerically dominant one (Eng *et al.* 1990). Although it can mature quickly, allowing populations to persist in short-lived shallow pools, it also persists later into the spring where pools are longer lasting (Simovich *et al.* 1992). Sugnet and Associates (1993b) listed 178 records for the species out of 3092 "discrete locations" containing potential habitat in their report. These 178 records represent the 32 known populations of the vernal pool fairy shrimp, which extend from Stillwater Plain in Shasta County through most of the length of the Central Valley to Pixley in Tulare County, and along the central coast range from northern Solano County to Pinnacles in San Benito County (Eng *et al.* 1990; M. Fugate, pers. comm., 1991; Sugnet & Associates 1993b). Five of these populations are believed to be comprised of a single inhabited pool. Four additional, disjunct populations exist; one near Soda Lake in San Luis Obispo County, one in the mountain grasslands of northern Santa Barbara County, one near the Santa Rosa Plateau in Riverside County, and one near Rancho California in Riverside County. Three of these four isolated populations contain only a single known pool occupied by the vernal pool fairy shrimp.

The vernal pool tadpole shrimp (*Lepidurus packardi*), a member of the family Triopsidae, was described by Eugene Simon in 1866 (Longhurst 1955a). Longhurst (1955a) placed the name in synonymy with *Lepidurus apus*. Subsequently, Lynch (1972) examined the taxa and determined that *Lepidurus packardi* is a valid species. The Service accepts Lynch's taxonomic treatment of the genus *Lepidurus*, which maintains *L. packardi* as a species.

Vernal pool tadpole shrimp adults reach a length of 50 millimeters (2 inches). They have about 35 pairs of legs and two long cercopods. This species superficially resembles the ricefield tadpole shrimp (*Triops longicaudatus*). However, *Lepidurus* possess a flat paddle-shaped supra-anal plate that is entirely lacking in members of the genus *Triops* (Pennak 1989; R. Brusca *in litt.*, 1992; M. Simovich *in litt.*, 1992; J. King *in litt.*, 1992). The vernal pool tadpole shrimp is known from 18 populations in the Central Valley, ranging from east of Redding in Shasta County south through the Central Valley to the San Luis National Wildlife Refuge in Merced County, and from a single vernal pool complex located on the San Francisco Bay National Wildlife Refuge in the City of Fremont, Alameda County.

The vernal pool tadpole shrimp inhabits vernal pools containing clear to highly turbid water, ranging in size from 5 square meters (54 square feet) in the Mather Air Force Base area of Sacramento County, to the 36 hectare (89 acre) Olcott Lake at Jepson Prairie. The pools at Jepson Prairie and Vina Plains have a very low conductivity, TDS, and alkalinity (Barclay and Knight 1984; Eng *et al.* 1990). These pools are located most commonly in grass bottomed swales of grasslands in old alluvial soils underlain by hardpan or in mud-bottomed pools containing highly turbid water.

The life history of the vernal pool tadpole shrimp is linked to the phenology of the vernal pool habitat. After winter rainwater fills the pools, the populations are reestablished from diapaused eggs that lie dormant in the dry pool sediments (Ahl 1991; Lanway 1974). Ahl (1991) found that eggs in one pool hatched within three weeks of inundation and maturated to sexually reproductive adults in another three to four weeks. Simovich *et al.* (1992) reported sexually mature adults occurred in another pool three to four weeks after the pools had been filled. A female surviving to large size may lay up to six clutches of eggs, totaling about 861 eggs in her lifetime (Ahl 1991). The eggs are sticky and readily adhere to plant matter and sediment particles (Simovich *et al.* 1992). A portion of the eggs hatch immediately and the rest enter diapause and remain in the soil to hatch during later rainy seasons (Ahl 1991). The vernal pool tadpole shrimp matures slowly and is a long-lived species (Ahl 1991; Alexander 1976). Adults are often present and reproductive until the pools dry up in the spring (Ahl 1991; Simovich *et al.* 1992).

Previous Federal Actions

Ms. Roxanne Bittman petitioned the Service to list the Conservancy fairy shrimp, longhorn fairy shrimp, vernal pool fairy shrimp, and California linderiella as endangered species in a letter dated November 19, 1990, which was received by the Service on November 20, 1990. Ms. Bittman submitted additional information on these species in a letter dated November 20, 1990, which was received on November 26, 1990. On March 21, 1991, the Service made a 90-day finding that the petition contained substantial information indicating that the action requested may be warranted. A notice announcing this finding was published in the **Federal Register** on August 30, 1991 (56 FR 426968).

Ms. Dee Warenycia petitioned the Service to list the vernal pool tadpole shrimp as an endangered species in a letter dated April 28, 1991, which was received by the Service on April 30, 1991. On November 21, 1991, the Service determined in the administrative 90-day finding that the petition contained substantial information that the action requested may be warranted. On May 8, 1992, the Service published a proposed rule in the **Federal Register** (57 FR 19856) to list the four fairy shrimp and vernal pool tadpole shrimp as endangered.

Summary of Comments and Recommendations

In the May 8, 1992, proposed rule (57 FR 19856) and associated notifications, all interested parties were requested to submit factual reports or information that might assist the Service in determining whether these taxa warrant listing. Appropriate State agencies, county governments, including affected planning departments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Notices of this proposal were published in the Santa Rosa Press Democrat, San Francisco Chronicle, Monterey Herald, Chico Enterprise Record, San Luis Obispo Telegram-Tribune, Santa Barbara News-Press, Modesto Bee, Sacramento Bee, and the Fresno Bee on June 5, 1992.

On June 4, 1992, the Service received a written request for a public hearing from Mr. George Robson of the Tehama County Planning Department. Several other requests for a public hearing also were received. As a result, on August 13, 1992, the Service published a notice in the **Federal Register** (57 FR 36380) announcing the public hearing and

reopening the comment period until September 18, 1992. The Service conducted a public hearing on August 31, 1992, at the Radisson Hotel in Sacramento, California. Testimony was taken from 6 p.m. to 8 p.m. Twenty-one persons presented testimony.

On September 18, 1992, the Service attended a public meeting held at the Red Bluff Community Center in Red Bluff, Tehama County, California. Six people presented oral and written comments to the Service.

During the comment periods, the Service received 117 comments (letters and oral testimony). Several people submitted more than one comment to the Service. The Service received two petitions containing 63 signatures of people supporting the listing and one petition containing 190 signatures of people opposed to the listing. The California Department of Parks and Recreation supported a listing of threatened for the four fairy shrimp but did not state a position on the vernal pool tadpole shrimp. The California Department of Fish and Game expressed concern for the fairy shrimp and also did not state a position on the vernal pool tadpole shrimp. Comments supporting the listing were received from 41 private parties, including the Riverside County Planning Department, and nine professional biologists from several institutions, including the Stanford University Center for Conservation Biology, University of California, University of San Diego, and San Diego Museum of Natural History. Comments opposing the listing were received from 34 private parties, organizations, and agencies including seven mosquito abatement districts. Opposition to the listing also was expressed by Congressman Wally Herger and Congressman Vic Fazio. Four commenters did not express an opinion.

In addition, after the comment period closed, six parties, including the California Department of Fish and Game, requested that the Service extend the date of the final determination for the five species by six months pursuant to 16 U.S.C. 1533(b)(6). The Act provides for a six-month extension if the Secretary finds that "* * * there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination * * * for the purposes of soliciting additional data." One of these commenters submitted a report that summarized collection records and field work conducted in 1993 (Sugnet and Associates 1993b). The California Department of Fish and Game supported the extension but stated that they had no additional information. The California Native Plant Society opposed the six-month extension and urged the Service to immediately list the five species under the Act.

The Service has reviewed all of the written and oral comments described above. Comments updating the data presented in the "Background" or "Summary of Factors Affecting the Species" are incorporated in those sections of this final rule. Opposing comments and other comments concerning the rule have been organized into specific issues. These issues and the Service's response to each are summarized as follows:

Issue 1: A number of commenters stated that a single public hearing was inadequate to obtain full public input on the proposal. They requested that public hearings be held in all of the towns and counties that contain vernal pools and swales inhabited by the five species.

Service Response: The Service is obligated to hold one public hearing on a listing proposal if requested to do so within 45 days of publication of the proposal (16 U.S.C. 1533(b)(5)(E)). In addition to the public hearing held on August 31, 1992, the Service attended a public meeting organized by Congressman Vic Fazio in Red Bluff, on September 18, 1992. The public comment period was extended to September 8, 1992, to allow all interested parties to provide written comments. In making a decision on a listing proposal, written comments are given the same weight as oral comments presented at hearings.

Issue 2: Several respondents stated that the Service's notification of the public on this proposal was inadequate.

Service Response: The Service went through an extensive notification process to make the public aware of this proposal; this process satisfied the requirements of the Act and is described at the beginning of this section.

Issue 3: Many respondents concluded that listing the fairy shrimp and the vernal pool tadpole shrimp would result in adverse economic impacts to thousands of hectares of land and questioned the value of these animals to society. Two commenters requested that an analysis of the economic impact of listing these species be completed. Two commenters noted that these species are restricted to vernal pools but stated that listing would result in adverse economic impacts by eliminating future residential or commercial development in areas containing this habitat. Five commenters claimed the fairy shrimp and the vernal pool tadpole shrimp are "insignificant" species and that listing would interfere with the natural evolutionary process of extinction. On the other hand, a number of respondents asserted that opposition to the listing of the species was based solely on economic interests. They cited the ecological and educational value of vernal pool plants and animals. Four crustacean biologists noted the species can be considered "living fossils" and are of great scientific value to the study of biological evolution, systematics, and ecology.

Service Response: Under section 4(b)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to "ensure" that listing decisions are "based solely on biological criteria and to prevent non-biological criteria from effecting such decisions" H.R. Rep. No. 97–835, 97th Cong. 2d Sess. 19 (1982). As further stated in the legislative history, "economic considerations have no relevance to determinations regarding the status of species." Because the Service is specifically precluded from considering economic impacts in a final decision on a proposed listing, the Service has not considered possible economic consequences of listing the three fairy shrimp and the vernal pool tadpole shrimp. There may be many opinions as to a particular species' contribution to society, including their aesthetic, scientific, or other significance, however, this contribution is not among the five factors upon which a listing determination is based.

Issue 4: One commenter recommended that the Service prepare an Environmental Impact Statement (EIS), pursuant to the National Environmental Policy Act (NEPA), on this rule. He stated that a decision to list these five crustaceans is a major Federal action that significantly affects the quality of the human environment.

Service Response: For the reasons set out in the NEPA section of this document, the Service takes the position that rules issued pursuant to section 4(a) of the Act do not require the preparation of an EIS. The courts held in *Pacific Legal Foundation* v. *Andrus,* 657 F2d. 829 (6th Circuit 1981) that an EIS is not required for listing under the Act. The decision noted that preparing EIS's on listing actions does not further the goals of NEPA or the Act.

Issue 5: One commenter requested that the Service conduct a Takings Implications Assessment under Executive Order 12630 for this listing action.

Service Response: The Attorney General has issued guidelines to the

Department of the Interior (Department) regarding implementation of Executive Order 12630.

The Attorney General's guidelines state that Taking Implications Assessments (TIAs), which are used to analyze the potential for Fifth Amendment taking claims are to be prepared after, rather than before, an agency makes a decision upon which its discretion is restricted. In enacting the Endangered Species Act, Congress required the Department to list a species based solely upon scientific and commercial data indicating whether or not the species is in danger of extinction. No discretion is afforded and the Service may not withhold a listing based upon economic concerns. Therefore, even though a TIA is required, a TIA for a listing action is to be finalized only after the final decision whether to list a species is made.

Issue 6: The California Department of parks and Recreation recommended that the four fairy shrimp should be listed as threatened species rather than endangered species.

Service Response: The Service has determined that threatened status is appropriate for the vernal pool fairy shrimp. The proposal to list the California linderiella as an endangered species has been withdrawn. The rationale for these actions and endangered status for the two other fairy shrimp species and the vernal pool tadpole shrimp is described at the conclusion of the "Summary of Factors Affecting the Species" section.

Issue 7: Several commenters expressed concern that it will be difficult or impossible to delist any or all of the crustaceans listed herein.

Service Response: When the recovery goals for a species have been met, the Service may prepare a proposal to delist or reclassify it. The process for delisting or reclassifying a species, allowed for at section 4(b)(3)(A) of the Act, is the same process used for listing the species.

Issue 8: Three respondents stated that compared to other federally listed crustaceans, the fairy shrimp and the vernal pool tadpole shrimp do not warrant listing under the Act.

Service Response: The claim that the status of the fairy shrimp and the vernal pool tadpole shrimp do not warrant listing under the Act when compared with other listed crustaceans does not address the full range of issues and complexities bearing on listing decisions. The multiplicity of factors and relationships that must be considered and interpreted in assigning the appropriate status to listed taxa is sufficiently complex that patterns of consistency may not be necessarily agreed upon by all parties.

Issue 9: Several respondents stated that critical habitat should be designated for the fairy shrimp and the vernal pool tadpole shrimp.

Service Response: The Service believes that the danger posed by designating critical habitat at this time outweighs the potential benefits. As discussed in Factors "A" and "E" under the "Summary of Factors Affecting the Species" section below, all of the species included in this final rule could be adversely affected by acts of vandalism. The Service is aware of vernal pools that contained suitable habitat for these animals that apparently were destroyed to escape regulatory requirements. Designation of critical habitat at this time would increase the degree of threat facing these species.

Issue 10: One commenter stated that there is not enough data on the species listed herein upon which to develop a recovery plan.

Service Response: Section 4(f) of the Act directs the Secretary to develop and implement recovery plans for conservation and survival of listed endangered and threatened species. The Service intends to pursue the development of a recovery plan for the four species as soon as possible. Identification of needed research and acquisition of additional data are key components of most recovery plans.

Issue 11: Several commenters stated that the California linderiella and the vernal pool fairy shrimp do not warrant listing because of their widespread distribution.

Service Response: Species may be listed under the Act if one or more of the five listing criteria imperils the species with extinction or if the species is likely to become endangered in the foreseeable future, throughout all or a significant portion of its range. These criteria apply for narrowly, as well as widely distributed species. As described elsewhere in this final rule, the vernal pool fairy shrimp is imperiled by habitat loss from construction activities and degradation to the extent that 28 of the 32 known populations face one or more of the various threats described elsewhere in this rule. Thus, even though this species has a relatively wide range in California, it is imperiled by one or more of five factors throughout a significant portion of its range.

At the time the proposed rule was published, the California linderiella was known from vernal pools in the Central Valley from central Tehama County to central Madera County and across the valley in the Sacramento area to the central and south coast mountains from Lake County south to Riverside County. Surveys conducted in 1993 and other information that has become available to the Service indicate that the range extends from Shasta County south to Fresno County and across the valley to the Coast and Transverse Ranges from Willits in Mendocino County south to near Sulfur Mountain in Ventura County. Within this area more vernal pools have been found to contain subpopulations of the California linderiella than was known at the time of the proposed rule. The populations in Riverside County have been determined to represent an undescribed species of *Linderiella*. The Service has carefully considered the additional information and has determined that the California linderiella fails to meet the definition of either an endangered or threatened species and has withdrawn it from consideration for endangered or threatened status.

Issue 12: After the comment period closed, six parties requested that the Service extend the date of the final determination for these species pursuant to 16 U.S.C. 1533(b)(6). That section of the Act provides for a six-month extension to solicit additional data if the Secretary finds that "there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination." The parties asserted that additional information on the range and status of these animals could become available during this time period. One of these commenters submitted a report as the basis for their request that summarized museum, literature, and field records, the majority of which were collected in 1993, for the five species (Sugnet and Associates 1993b). A seventh party, the California Native Plant Society, stated that they were opposed to the six month extension and they urged the Service to immediately list the five species.

Service Response: The report by Sugnet and Associates (1993b) provided a number of records for the California linderiella, vernal pool fairy shrimp, and the vernal pool tadpole shrimp that have been incorporated into this final rule. The report listed 3092 "discrete locations" that contained 703 records of the California linderiella, 178 records of the vernal pool fairy shrimp, and 345 records of the vernal pool tadpole shrimp.

The report by Sugnet and Associates (1993b) presented only township and range information on the locations of the California linderiella, vernal pool fairy shrimp, longhorn fairy shrimp, Conservancy fairy shrimp, and the vernal pool tadpole shrimp. A request by the California Department of Fish

and Game to obtain the precise locations that served as the basis for the report was unsuccessful (letter from California Department of Fish and Game to Sugnet and Associates, dated December 29, 1993; letter from Sugnet and Associates to California Department of Fish and Game, dated January 29, 1994). The report also treated the records of the individual vernal pools inhabited by the California linderiella, vernal pool fairy shrimp, and the vernal pool tadpole shrimp as "discrete locations." However, as described in greater detail in the **Background** section, abundance of inhabited vernal pool complexes most appropriately describes the population status of the five vernal pool crustaceans; animals in individual pools most appropriately are referred to as subpopulations. Accordingly, the study by Sugnet and Associates (1993b) overestimated the number of populations of the California linderiella, vernal pool fairy shrimp, and the vernal pool tadpole shrimp. Statements in Sugnet and Associates (1993b), such as "Results of this effort indicate that *B. lynchi* occurs at a total of 178 discrete locations * * *", should be interpreted in light of the fact that a number of inhabited pools can occur within a single vernal pool complex, and that all of these could be threatened by a single project proposal. For example, the proposed Sunrise-Douglas development in Sacramento County contains over 500 vernal pools (Sugnet and Associates 1993a). An unknown number of these pools contain the vernal pool fairy shrimp, and/or vernal pool tadpole shrimp.

The data in Sugnet and Associates (1993b) and other information available to the Service increased the known ranges and number of populations from that described in the proposed rule for three of the five species and located additional populations for one species. The report identified a geographic range extension for the vernal pool tadpole shrimp and increased the number of populations from fourteen to seventeen; none were from unexpected areas or non-vernal pool habitat. Two additional populations of the Conservancy fairy shrimp were located, one at the Sacramento National Wildlife Refuge and one in northern Ventura County. The geographic distribution of the vernal pool fairy shrimp was not increased but additional pools containing this species were located within the known range and known populations of this animal.

With the exception of the California linderiella, the Service concludes that the report by Sugnet and Associates (1993b) does not provide a basis for significant disagreement regarding the sufficiency or accuracy of the available data relevant to this listing action. Rather, the data presented in the report substantiates the rarity and fragmented distributions of the four species listed herein. Therefore, the Service has determined to issue a final regulation pursuant to 16 U.S.C. 1533(b)(6)(i)(I).

Issue 13: Many commenters, including the California Department of Transportation and Congressman Wally Herger, requested the Service delay or not list the five species because they believed additional distributional and ecological data are needed to determine the "true" status of these animals. Several people contended that the survey work and collection data upon which the proposed rule was based are inadequate. One commenter contended that this perceived lack of information would result in a procedurally inadequate listing. Eight commenters stated that the data utilized by the Service presents only collection places inhabited by the species. They asserted that the Service did not conduct a random field survey and failed to accurately delineate the distributions of the species. These parties contended that the absence of information on locations that are not inhabited by the animals suggests a general lack of extensive collection efforts or knowledge of them. To support the need for further field work, one commenter cited 18 records of the vernal pool fairy shrimp and 30 records of the California linderiella that were not included in this proposed rule. This commenter did not provide any additional records of the Conservancy fairy shrimp, the longhorn fairy shrimp, or the vernal pool tadpole shrimp.

Service Response: Scientifically credible data on the status of the five crustaceans was collected in a random 322 kilometer (200 mile) north-south transect in the Sacramento Valley from Fall River in Shasta County to Jepson Prairie in Solano County (Simovich *et al.* 1992). This study found that distinct segments totaling 35 kilometers (22 miles), or 11 percent of the transect, contain vernal pools and swales. Within the portions of the transect, the vernal pool tadpole shrimp and the vernal pool fairy shrimp were found on 16 kilometers (10 miles), the Conservancy fairy shrimp on 6 kilometers (4 miles), and the California linderiella on 10 kilometers (6 miles). The animals were not found in all pools and swales in suitable habitat areas in this study (J. King, *in litt.*, 1992). King (*in litt.*, 1992) reported that the vernal pool tadpole shrimp was found in only five pools on 8 kilometers (5 miles) of the 16 kilometers (10 miles) of vernal pools where the animal occurred, indicating a sparse distribution within much of the area where it occurs. The fairy shrimp species and the vernal pool tadpole shrimp largely were absent from extensive regions in the Sacramento Valley where degraded vernal pools still remain, such as the Red Bluff and Coyote Creek areas of Tehama County, and the Allendale area of Solano County (R. Brusca, *in litt.*, 1992). The three crustacean biologists who conducted this research concluded that based on this random field survey, these fairy shrimp species and the vernal pool tadpole shrimp are rare throughout their ranges.

A comparison of the maps in Sugnet and Associates (1993b) indicates that the number of occupied pools, and amount of suitable habitat for the 30 populations of the California linderiella are larger than for the 32 populations of the vernal pool fairy shrimp. In addition, the California linderiella is known from the north coast, San Francisco Bay area, western areas in the San Joaquin Valley, and the western foothills of the Sierra Nevada in San Joaquin and Stanislaus Counties where the vernal pool fairy shrimp is not known to be present (Sugnet and Associates 1993b).

The Service concludes, as detailed in the "Summary of Factors" section, that there is sufficient biological evidence that the vernal pool fairy shrimp, Conservancy fairy shrimp, longhorn fairy shrimp, and the vernal pool tadpole shrimp warrant listing. Sampling conducted at various locations and intensities between 1981 and 1993 by biologists familiar with the four fairy shrimp and the vernal pool tadpole shrimp and their habitat provided adequate information on the distribution, habitat requirements, and most importantly, threats to the four species to warrant the present action. All additional data provided by respondents during the comment period, including the report by Sugnet & Associates (1993b) have been incorporated into this final rule; none of this data indicated that these taxa were not threatened or endangered. The Service's decision to propose the four fairy shrimp and the vernal pool tadpole shrimp was based on significant threats associated with habitat loss and fragmentation, rather than solely on the basis of population numbers.

Issue 14: Several commenters, including Congressman Wally Herger, requested the precise locations of the populations of the species be widely disseminated or included in the final rule. One respondent requested that the

Service notify all landowners whose property has been found to contain one or more of the species.

Service Response: For the reasons discussed in the response dealing with critical habitat below, the Service concludes that providing the exact locations would increase the degree of threat facing these species.

Issue 15: Some commenters were concerned that the Service did not give due consideration to the impacts of the six year drought in California. They contended that increased amounts of rainfall would result in greater numbers of the fairy shrimp and the vernal pool tadpole shrimp.

Service Response: The average and above average rainfall levels that occurred in 1992/1993 did not reveal significant new populations of the five species in unexpected areas because most vernal pools held water, at least to some extent, during the drought that extended from 1987 to 1992. Even very small, shallow vernal pools were observed to hold water, allowing reproduction of the four fairy shrimp and vernal pool tadpole shrimp during these drought years (J. King pers. comm. 1992; M. Simovich pers. comm. 1992; Simovich *et al.* 1993). Also, natural vernal pool complexes are expected to have some pools that at least partially pond in drought years even though other pools may fill only during years of average or above average precipitation.

Issue 16: Several commenters concluded that the data on the crustaceans does not demonstrate a historic and consistent decline in populations levels. One commenter stated that the data on the Conservancy fairy shrimp, longhorn fairy shrimp, and the vernal pool fairy shrimp is very limited because they were only recently described.

Service Response: Relatively little information is available to reconstruct the distribution of the four species listed herein prior to the loss of vernal pool habitat that began in the late 1800's. However, the Service is required to evaluate species based on current and likely future threats to their status. As discussed in this final rule, numerous populations of the four species face severe, imminent threats that could result in substantial habitat losses and extirpations in the future. Since at least the mid-1980's, the human population has been growing rapidly throughout the Central Valley and other regions of California. Although three of the five crustaceans were described scientifically in 1990, their distribution and abundance are sufficiently documented relative to current and future threats to their continued existence. Field samples made from vernal pools have contained these three fairy shrimp prior to 1990. The earliest known collections of the Conservancy fairy shrimp were made in 1979, the vernal pool fairy shrimp in 1965, and the longhorn fairy shrimp in 1937.

Issue 17: The Contra Costa Water District reported that neither the Los Vaqueros Reservoir alternative nor the Kellogg Reservoir alternative would impact the single vernal pool complex inhabited by the vernal pool fairy shrimp within the watershed (John Gregg, Los Vaqueros Project, *in litt.*, 1992).

Service Response: The Los Vaqueros Reservoir project likely would result in adverse impacts to the California linderiella, vernal pool fairy shrimp, and the longhorn fairy shrimp based on an analysis of the environmental documents for this project (California Department of Fish and Game 1983; John Gregg, Los Vaqueros Project, *in litt.*, 1992; Jones and Stokes 1986, 1989, 1990, 1991). On September 2, 1993, the Service issued a conference opinion to the Bureau of Reclamation for the effects of the Los Vaqueros Reservoir project on the three fairy shrimp species.

Issue 18: One commenter stated that there are populations of the crustacean species located on nature preserves and for this reason the Service was urged to "slow" the listing process for these animals. Four people noted that portions of three preserves owned by the Nature Conservancy are inhabited by three of the fairy shrimp species and the vernal pool tadpole shrimp. One commenter concluded that this assured the long-term protection of these species. However, the other three commenters stated that the preserves were either not specifically managed for these animals or the sites are imperiled by activities on adjacent properties.

Service Response: The Service recognizes that while some populations of the fairy shrimp and vernal pool tadpole shrimp are found on protected public and private lands, almost all are located in areas that are not secure against adverse impacts to these animals. Please refer to Factor D below, for an expanded discussion on landownership patterns and protection for these species.

Issue 19: One commenter said the scientific articles containing data on the fairy shrimp that were used by the Service are "primitive and unreliable" and the taxonomy of these crustaceans is "confused". However, four recognized crustacean biologists noted that the taxonomy of fairy shrimp found in California had been reviewed recently in a peer-reviewed scientific journal and the taxonomic status of these species is widely accepted by current authorities.

Service Response: Using the best and most recent systematic information from a number of reliable sources, including Eng *et al.* (1990), D. Belk (pers. comm., 192), and M. Fugate (pers. comm., 1992), the Service maintains that the Conservancy fairy shrimp, vernal pool fairy shrimp, and the longhorn fairy shrimp are valid species and no further taxonomic studies are needed.

Issue 20: Several respondents, including Congressman Wally Herger contended that the vernal pool tadpole shrimp is a "taxonomically unstable species". One commenter stated that taxonomic confusion between Lemmon's tadpole shrimp (*Lepidurus lemmoni*) and the vernal pool tadpole shrimp should be resolved prior to any listing decision. Several commenters stated that the taxonomy of tadpole shrimps is unresolved and recommended that the Service not list the animal. Expressing a contrary position, three recognized authorities on crustaceans provided information showing the vernal pool tadpole shrimp is a biologically and taxonomically valid species. They reported that the vernal pool tadpole shrimp is distinct in both morphology and ecology from Lemmon's tadpole shrimp, which is restricted to alkaline lakes is western North America.

Service Response: Using the best and most recent systematic information from a number of reliable sources, including Lynch (1972) and various crustacean biologists) (R. Brusca, *in litt.*, 1992; M. Simovich, *in litt.*, 1992; J. King, *in litt*, 1992), the Service maintains that the vernal pool tadpole shrimp is a valid species and no further taxonomic studies are needed.

Issue 21: Four respondents expressed concern that the Service was going to list the ricefield tadpole shrimp (*Triops longicaudatus*) a pest in rice fields in the Central Valley. They further stated that protection of this animal would be an "economic disaster" for rice growers of California. Alternatively, three recognized crustacean authorities provided information showing that the rice field tadpole shrimp is only distantly related to the vernal pool tadpool shrimp. They stated that *T. longicaudatus* is known to occur in the Central Valley only in rice fields while *L. packardi* is found only in vernal pools. One of the crustacean biologists stated that based on genetic studies, the two species are separated by genetic distances on the order of those normally found between crustacean orders (J. King, *in litt.*, 1992). In addition, the four

crustacean biologists noted that the two species are morphologically distinct and are easily distinguishable from each other.

Service Response: The findings in this final rule reflect the published taxonomic literature and the expert opinion of recognized crustacean biologists.

Issue 22: A number of commenters stated that Federal, State, and local regulatory processes provide adequate protection for the crustaceans. Two respondents said that listing would directly affect agriculture, industrial, and commercial development in areas that have been meticulously planned and subject to State laws such as the California Environmental Quality Act (CEQA) and California Subdivision Map Act. Some commenters noted the wetlands "no-net-loss" policies of several State and county agencies, while other cited section 404 of the Clean Water Act. On commenter analyzed data for a group of 29 development projects in the Sacramento area and found that 56 percent of the vernal pools at these project sites had been preserved and 0.9 hectare (2.2 acres) of vernal pools provided as mitigation for each acre impacted under Corps permit conditions pursuant to section 404 requirements. The commenter stated that this group of projects is representative of the level of preservation afforded vernal pool habitat in the Sacramento area and further concluded that this level of protection may be equaled or exceeded for projects requiring section 404 permits throughout the range of the five species. Another commenter noted that the Corps recently classified vernal pools at a proposed project site in Sacramento County as "aquatic resources of national importance". According to the commenter, this designation will cause the Corps to more closely evaluate impacts to vernal pools from proposed projects and thus provide significant protection to vernal pool habitat for the five crustacean species during a six-month time extension.

Expressing a contrary position, several other commenters noted that Federal, State, and local laws have been ineffective in providing protection for these species. The Mount Lassen Chapter of the California Native Plant Society provided data on the destruction of two vernal pool complexes known to have been inhabited by the vernal pool tadpole shrimp in the City of Chico. They provided information on two other vernal pool complexes in Chico that are located on properties proposed for residential development. Another commenter stated that vernal pools in Santa Rosa have been eliminated despite the protective provisions of State law (CEQA). A number of respondents noted that destruction of vernal pools commonly is allowed if an attempt is made to create artificial habitat as compensation.

Service Response: While vernal pool habitat has been preserved permanently under special conditions of section 404 permits for a number of projects, significant areas of vernal pool habitat continue to be lost in spite of the Corps jurisdictional authority to regulate these wetlands under the Clean Water Act. Since 1987, the Service has been tracking the Corps' implementation of Nationwide Permit 26 within the area of responsibility of the Service's Sacramento Field Office. A Service report produced in October 1992 showed that the Corps' Sacramento District authorized filling of 189 hectares (467 acres) of wetlands between 1987 and 1992 pursuant to Nationwide Permit 26 (U.S. Fish and Wildlife Service 1992). During this same time period, the Corps' San Francisco District authorized projects under Nationwide Permit 26 that filled a total of 104 hectares (257 acres) of wetlands of which 15.6 hectares (38.6 acres) were in the Santa Rosa Plain. The report notes that these figures are conservative estimates because notification of agencies for projects affecting less than 0.405 hectares (1.0 acre) are not mandatory. The Service estimates that a majority of the wetland losses permitted in the Sacramento District constitute vernal pools. In addition, between December 1, 1992, and June 15, 1993, the Service identified 10 unauthorized projects in Sacramento and Butte Counties that destroyed or damaged between 8.5 and 15 hectares (21 and 37 acres) of vernal pool habitat (D. Strait, pers. comm., 1993). The projects were not authorized because landowners either were not required or failed to comply with the regulatory requirements of the section 404 permitting process. In addition, gravel mines are proposed for significant areas in the Sacramento Valley, including an approximately 404 hectare (1,000 acres) site south of Mather Air Force Base that contains the California linderiella, vernal pool fairy shrimp, and the vernal pool tadpole shrimp. Under recent changes in the Corps of Engineers regulations, some gravel mining activities will be regulated. However, in the past, most of these activities were not subject to the provisions of the Clean Water Act.

In December 1992, the Department of the Interior signed a revised Memorandum of Agreement with the Department of the Army that provides an administrative process for requesting higher level review of District Engineers' decisions on section 404 individual permit applications. One criterion necessary for higher level review under the Memorandum of Agreement is that the wetlands in question must constitute "aquatic resources of national importance." The ultimate determination on whether the criterion is met will be made on a case-by-case basis by the Assistant Secretary of the Army (Civil Works). Requests for higher level review only apply to projects subject to individual permits, not Nationwide permits. Projects determined by the Corp's Sacramento District to quality for authorization under Nationwide Permit 26 are not eligible for higher level review. Department of the Army concurrence with the designation of vernal pools at the project site at issue "as aquatic resources of national importance" does not ensure application of additional protection to vernal pools beyond that site (see discussion under Issue 29 and Factor D, "Summary of Factors Affecting the Species", for a complete discussion on the adequacy of existing regulatory mechanisms for the four species listed herein). Such a designation must be made on a site-specific basis and, by itself, does not necessarily effect any protection of these resources. San Francisco District of the Corps considered possible revocation of Nationwide Permit 26 in the Santa Rosa Plain that would have ensured that all projects affecting wetlands in this area would require authorization on an individual permit basis and potential higher level review. However, the Corps decided instead to impose stricter conditions on the use of Nationwide Permit 26 in this area, including demonstration that no rare or endangered plant or animal species are supported on the wetlands within any proposed project site. The Corps also determined that individual permits would be required on wetlands that support federally proposed or listed threatened or endangered species. Regardless, of the four species listed herein, only the California linderiella is found at the Santa Rosa Plain and this area constitutes a small percentage of the overall geographical range of the species. Therefore, any additional protection afforded vernal pools in this area would not provide rangewide protection of these animals.

Based on this and other information discussed under Factor D below, the Service concludes that proposed and on-going damage or destruction of vernal pools in California caused by urban and agricultural development is prevalent despite existing Federal, State, and local regulations and that existing levels of protection are not adequate to assure the survival of these species.

Issue 23: One commenter completed a literature survey of three reports that addressed trends in overall wetland losses throughout California and the Central Valley, in particular. Essentially, this commenter concluded that the historic trend of wetland losses throughout California subsided in the mid-1980's and that current wetland acreages actually are increasing in the State, apparently as a result of the implementation of Federal wetland regulatory mechanisms.

Service Response: Methodological flaws and ambiguities in the analysis conducted by this commenter invalidate the report's findings. The most serious flaw is the comparison of wetland acreages in various studies that focused on different geographic study areas. For example, the two Service reports reviewed by the commenter cannot be used together to draw conclusions on changes in wetland acreages because data from the Central Valley and the entire State are not comparable.

Issue 24: Several commenters disputed the Service's statement in the proposed rule that 90 percent of the original vernal pool habitat throughout the Central Valley has been lost and that an estimated 2 to 3 percent of vernal pool habitat continues to be lost annually. Several commenters contended that the study referenced by the Service actually showed a 67 to 88 percent historic loss of vernal pool acreage. One commenter further stated that additional interpretation and analysis of the data used in the study revealed that historic losses were 63 percent. Based upon information contained in a separate document prepared by the Service, other commenters asserted that the actual loss more closely approximated 50 percent. After the comment period closed, one respondent commented that preliminary results from a newly-initiated soils data analysis indicate that the original estimates of historic vernal pool losses in the Central Valley may be substantially less than was identified in the proposed rule. Another late commenter noted that U.S. Soil Conservation Service information supported recent conclusions drawn by other soil scientists that 404,700 hectares (1 million acres) of soils suitable for vernal pool habitat remain from 809,400 hectares (2 million acres) determined to have historically existed in the Central Valley, thus implying that historic losses were close to 50 percent.

Service Response: After closer review of the referenced study (Holland 1978), the Service discovered apparent arithmetic errors in the estimates of historic vernal pool habitat (i.e., areas that could have supported pools) losses. Correction of these errors yields estimates of vernal pool habitat losses between 60 and 85 percent. Accordingly, the Service finds that the study's corrected estimates of historic vernal pool habitat loss in the Central Valley are reasonably close to the range of estimates determined by those commenters who criticized the study. Comments concerning a 50 percent habitat reduction based upon a Service publication appear to be derived from the Wetlands of the California Central Valley; Status and Trends 1939 to mid-1980's (Frayer *et al.* 1989), which estimated losses of palustrine emergent wetlands. However, calculation of vernal pool losses cannot be deduced from the numerous wetland types categorized as "palustrine emergent wetlands." The results of the soils data analysis under preparation by the commenter were not available for review at the time of publication of this final rule.

The purpose of addressing historic vernal pool losses in the proposed rule was to provide a historical context to the Central Valley ecosystem inhabited by the four crustacean species. It was not the intention, nor is it appropriate, to conduct an exhaustive analysis of information pertaining to the history of vernal pool habitat losses affecting the five crustacean species. Unverifiable and/or contradictory information on the extent of former and current vernal pool habitat will generate continued debate on this issue throughout the foreseeable future. In a legal context, the extent of historic habitat loss is of academic interest only, since the five factors at 50 CFR 424.11(c) under which species may qualify for listing look prospectively to the future rather than retrospectively on the past. The relevant issues are whether the current extent of fairy and tadpole shrimp habitat is depleted and/or fragmented enough to render the species vulnerable to extinction, or whether foreseeable threats similarly threaten the species.

Issue 25: Eight commenters, including four mosquito abatement districts, reported that vernal pools provided an important breeding source for mosquitoes. They stated that the listing of the fairy shrimp and the vernal pool tadpole shrimp, when coupled with the preservation and creation of vernal pools next to residential areas, will create a serious health risk to people. They were especially concerned about the western encephalitis mosquito (*Culex tarsalis*), a vector of western equine encephalitis and Saint Louis encephalitis. Some of the respondents also expressed concern about mosquito-borne malaria and yellow fever. A number of commenters stated that continued urban development would result in greater numbers of people being affected by mosquitoes and increase the need to control mosquitoes in vernal pools. The four mosquito abatement districts were concerned that listing of the crustaceans would increase the costs and restrictions on their control activities.

Expressing a contrary position, four biologists stated that mosquitoes rarely are found in vernal pools and swales that have not been impacted by humans. They reported this is likely due to the presence of the high abundance of predatory crustaceans and aquatic insects that inhabit this ecosystem. A crustacean specialist noted that mosquitoes were absent or not present in significant numbers in pools inhabited by the fairy shrimp and the tadpole shrimp. Significant numbers of mosquito larvae were found in areas that contain created vernal pools or artificial bodies of water e.g., ditches and stock ponds where the crustaceans are sparse or absent. One biologist reported that no mosquito larvae were found in any of the 27 randomly sampled vernal pools at Beale Air Force Base (Mary Ann Griggs, private biologist, Colusa, California, *in litt.*, 1992). However, mosquitos were found in areas that had augmented water supply from a pressure release valve on a well. The water supply produced a distinctively different flora and fauna than nearby vernal pools. Commenting biologists stated that the use of oil and mosquito fish (*Gambusia affinis*) will adversely affect vernal pool fauna, including the three fairy shrimp and the vernal pool tadpole shrimp, consequently allowing mosquitoes populations to sue vernal pools where they otherwise are controlled or eradicated by the nature pool fauna.

Service Response: The best information available to the Service indicates that non-degraded vernal pools and swales do not provide a significant breeding source for mosquitoes. Mosquitoes do not appear in vernal pools until very late in the season, when they are unlikely to complete their development before the pools dry (Wright 1991; Stan Wright and

Dave Brown, Sacramento-Yolo Mosquito Abatement District, pers. comm., 1993). This pattern likely is due to the ecology of vernal pool invertebrate communities rather than to oviposition timing of female mosquitoes or to water chemistry, since (1) duck ponds in the same area that fill at the same time as many vernal pools produce mosquitoes throughout the wet season while vernal pools do not, and (2) degraded pools and ruts without healthy vernal pool invertebrate communities support mosquito populations while undisturbed vernal pools in close proximity do not (S. Wright, pers. comm., 1993; J. King, pers. comm., 1993; Christopher Rogers, Redding Mosquito Abatement District, pers. comm., 1993).

Female mosquitoes are attracted to gases produced by fermentation that indicate an abundance of decaying organic matter suitable for food for mosquito larvae (S. Wright, pers. comm., 1993). This likely is the cue used by females to select oviposition sites. Healthy vernal pools appear to have tight nutrient cycling and relatively low levels of decaying organic material, which makes them undesirable as oviposition sites for gravid mosquitoes. Only late in the season when the abundance of the invertebrates in vernal pools begins to decline are enough nutrients and organic material available to make the vernal pools attractive oviposition sites. By this time, however, it is often too late for the mosquito larvae to develop before the pools dry. Therefore, protecting vernal pools from disturbance and degradation can prevent vernal pools from becoming mosquito breeding grounds, thereby naturally preempting the need for artificial mosquito control in this habitat.

Quantitative data collected from 64 vernal pools of widely varying types, depths, and locations on a random 322 kilometer (200 mile) north-south transect in the Central Valley from Fall River in Shasta County to Jepson Prairie in Solano County over an entire season indicate that mosquitoes are successful in breeding and developing only in pools that have been disturbed or degraded, or late in the season (J. King, pers. comm., 1993). Only about one third (34 percent) of the 64 pools studied were occupied by mosquito larvae or pupae. Most of these pools had relatively low population densities of mosquitoes, and in all of these pools mosquitoes were only present later in the season. Of the 5 pools (8 percent) that did contain abundant mosquitoes, one was an artificially created pool and another appeared to be degraded by vehicular use and possibly discing.

The Service recognizes that there could be potential conflicts with protection of the three fairy shrimp and the vernal pool tadpole shrimp in implementing mosquito control programs. The Service will be working with Federal, State, and local agencies, and examining additional alternatives, such as the use of *Bacillus thuringiensis* var. *israelensis* (Bti) and methoprene, to allow suppression programs to continue. In this way, the Service is confident that Federal listing will contribute to the survival of the four species and promote the understanding of their vernal pool environment without jeopardizing public health and safety.

Issue 26: Several commenters expressed concern that listing of the crustaceans would curtail or eliminate cattle and livestock grazing in areas containing vernal pools. Two crustacean biologists reported that grazing by cattle and the crustacean species are compatible with each other. They stated that moderate to low levels of grazing likely have no adverse impacts on the fairy shrimp and the vernal pool tadpole shrimp.

Service Response: The Service recognizes and acknowledges that low to moderate levels of livestock grazing likely have no impact or may be beneficial for these crustaceans. However, overgrazing in areas containing the shrimp and their habitat likely is detrimental to these species. High levels of pasture runoff may lead to increased siltation of vernal pool habitat, and high livestock densities may cause changes in pool water chemistry, water quality, and excessive physical disturbances, such as trampling.

Issue 27: Several commenters reported the presence of the fairy shrimp in non-vernal pool habitats, such as irrigation return ditches, stock ponds, a backhoe pit, a gravel pit, and a depression left from scraping. One commenter stated that a historic vernal pool habitat site in southern Sacramento County that was disced, plowed, and farmed with winter wheat still contained inundated depressions inhabited by the vernal pool fairy shrimp and vernal pool tadpole shrimp. This example was used to support the contention that these species can survive and reproduce in degraded habitat. The commenter also noted that "the site was not leveled unlike other properties in the area, and still retained some swale and hillock topography." (Bill Sugnet, Sugnet and Associates, *in litt.*, 1992). Another respondent, based on anecdotal data, concluded that the habitat for the vernal pool fairy shrimp, and the vernal pool tadpole shrimp has been insufficiently described. He reported them from roadside ditches, scrapes, tire track depressions, or similar man-made ephemeral pools from 28 locations in Sacramento County (E.J. Koford, Ebasco Environmental, *in litt.*, 1992). This commenter asserted that herbicides and/or mechanical weed control at sites located along some railroad tracks may have promoted the habitat for these species. One crustacean biologist, based on discussions, examination of photographs of these sites, and personal knowledge of the area concluded that they are remnant or disturbed vernal pools (J. King pers. comm., 1992).

Service Response: The Service has reviewed carefully the assertion that the crustaceans are found in non-vernal pool habitat. A number of the sites that served as the basis for this belief have been examined by Service biologists and were found to represent degraded vernal pool habitat or, in one case, an ephemeral wetland located in a gravel pit that likely was colonized by fairy shrimp washed in from adjacent vernal pools during periods of high rainfall. Based on the best information available, the Service believes that a significant portion of these records most likely represent "unusual" vernal pools (e.g., rock depression pools) or vernal pool habitat that was incorrectly identified. Some of these records, such as roadside ditches, scraped areas, and airport runoff ditches almost certainly represent remnant vernal pool habitat or are part of the swale systems connected to vernal pools. Lack of experience or familiarity with vernal pool ecosystems likely has led some respondents to misinterpret these observations. Most of these disturbed habitats also are imperiled by urban development, gravel mining, and, in the cases of roadside ditches, grading and spraying of herbicides for highway maintenance. In addition, the accurate identification of fairy shrimp is extremely difficult because the morphological characters required to differentiate the various species are often extremely subtle and can be misinterpreted by biologists not specifically trained in fairy shrimp identification. Widespread, common species, such as Lindahl's fairy shrimp, can be mistaken for other fairy shrimp species. Some of the records of the California linderiella and vernal pool fairy shrimp in non-vernal pool habitats may result from such misidentifications.

The potential for a fairy shrimp population to persist after habitat disturbance varies from case to case,

depending upon specific circumstances, such as the nature and intensity of disturbance, how much of the original egg bank was destroyed, and other factors. With the exception of a few extremely rare cases, plowed fields that historically held vernal pool habitat do not support populations of these species. The example provided by the commenter is not typical of agricultural operations, as is pointed out in the commenter's statement that this site was "unlike other properties in the area . . ." (B. Sugnet, *in litt.*, 1992), with respect to the degree of disturbance (i.e., leveling) and adverse modification of the vernal pool habitat.

Issue 28: Many respondents contended that the proposed rule did not reflect accurately the success of vernal pool "creation" efforts. For example, a number of commenters claimed that artificial vernal pools, primarily in Sacramento and Placer Counties, cited in Sugnet and Associates (1992), were successful and were adequate mitigation for adverse impacts to vernal pools resulting from urban development. Other commenters asserted that ongoing creation ratios of 2:1 or greater and the ability to transplant these animals makes it likely that the habitat for these species will increase over time.

One commenter stated that the ability to successfully transplant the eggs of fairy shrimp and tadpole shrimp is well known. One submitted report (Sugnet and Associates 1992) asserted that the four fairy shrimp and vernal pool tadpole shrimp have been shown in the "literature and in field sampling to be extremely hardy and capable of surviving long-term in greatly disturbed conditions and artificial habitats". The report also stated that there are technical papers that demonstrate the ability to rear shrimp in the laboratory. The party submitting this report stated that they have been creating vernal pools as mitigation for development projects and monitoring the fairy shrimp and tadpole shrimp for the past three years from 1989 to 1992. They stated that although the presence of adult fairy shrimp may be due to a certain number of eggs continuing to hatch from the initial inoculum in successive years due to differences in physiochemical parameters, the presence of mating individuals and gravid female fairy shrimp in artificial pools, as well as historically degraded habitat, leads them to conclude that natural reproductive mechanisms are still at work. The report stated that the California linderiella and the vernal pool fairy shrimp can be transplanted successfully from one vernal pool location to another. The supporting data and criteria by which success was determined were not specified in the report. Based partly on the above information, numerous commenters stated that the fairy shrimp and vernal pool tadpole shrimp were not imperiled.

On the other hand, one crustacean biologist stated that the reports of successful vernal pool creation have been "generally poorly controlled, completely lacking in long-term monitoring, and do not appear in the peer reviewed scientific literature * * *" (J. King, *in litt.*, 1992). In addition, this commenter reported that "contrary to common misconception these organisms [vernal pool tadpole shrimp] are not easily raised outside of their natural habitat." This crustacean specialist stated that their efforts to maintain viable reproductive vernal pool tadpole shrimp in the laboratory have been unsuccessful. Another biologist pointed out that long-term studies of the effect of mixing genotypes in created pools likely are adversely impacting the fairy shrimp and the vernal pool tadpole shrimp (M. Simovich, *in litt.*, 1992).

Eight biologists specializing in crustaceans or plants inhabiting vernal pools stated that these habitats are an intricate ecosystem and efforts to recreate them likely will not be successful until they are more fully understood. Furthermore, six fairy shrimp specialists concluded that protection of these animals is best assured via the preservation of extant habitat and its associated community.

Service Response: In a review of 21 vernal pool creation projects dispersed throughout California, Ferren and Gervitz (1990) concluded that no conclusive data exist to substantiate the hypothesis "that vernal pools can be restored or created to provide functional values within the range of variability of natural pools." Though some individuals (Sugnet and Associates *et al.* 1992) have claimed complete or some degree of success, these conclusions generally are based on anecdotal unscientific studies and the persistence of fairy shrimp after only a short period of time, e.g., three years or less. Moreover, the principal pool creation technique (i.e., relocation of soil from excavated pool bottoms versus inoculation of a known quantity of eggs) and lack of scientifically designed monitoring do not allow for collection of the necessary data to determine the long-term population viability of transplanted species.

In a study on the preservation and management of vernal pools (Jones and Stokes Associates 1990), the researchers concluded that the "science of vernal pool creation is still in its infancy and is primarily an experimental mitigation technique." Environmental requirements, not dispersal, is likely the limiting factor in the distribution of the fairy shrimp and the vernal pool tadpole shrimp (D. Belk, pers. comm., 1992). The four species in this final rule require unknown, but more restrictive environmental conditions than more widely distributed taxa (J. King, *in litt.*, 1992; M. Simovich, *in litt.*, 1992; R. Brusca, pers. comm., 1992). There are no demonstrated proven long-term populations of the fairy shrimp or the vernal pool tadpole shrimp in artificial habitats.

Artifically created habitats also may increase the threat of hybridization between the four fairy shrimp and other more widespread species. For example, Lindahl's fairy shrimp is a widespread species found in western North America that inhabits a wide array of conditions, ranging from pools whose salinity is high enough to support brine shrimp (*Artemia* sp.) to snow melt pools. Poorly planned, careless construction, or haphazard placement of the substrate during vernal pool creation may enhance conditions for species like Lindahl's fairy shrimp. Laboratory studies have shown that Lindahl's fairy shrimp and the vernal pool fairy shrimp readily hybridize in the laboratory and produce viable first generation hybrids (Fugate, pers. comm., 1992). There is evidence that hybridization between other fairy shrimp has occurred in the field because of human actions. Belk (1977) reported that the westward dispersal from Texas and New Mexico of a desert fairy shrimp (*Streptocephalus dorothae*) across extensive expanses of arid land into Arizona may be due to the cattle ponds and livestock watering holes that were built after the 1800's in the region. Wiman (1979) reported that viable hybrid offspring are produced by this species and Mackin's desert fairy shrimp (*Streptocephalus mackini*), a resident species in Arizona.

Given these uncertainties associated with vernal pool creation, the Service maintains that transplanting target species (e.g., listed, proposed, and candidate species) into artificial pools cannot be considered adequate replacement for the loss of occupied vernal pool habitat. Even if such transplantation of the fairy shrimp and the vernal pool tadpole shrimp and creation of their habitat were documented to be a proven procedure rather than an evolving problematic venture, artificial pool creation for the species listed herein would not fulfill

the mandates of section 2 of the Act, which require the Service to develop programs that conserve the ecosystems upon which listed species depend. As discussed elsewhere herein, natural habitats throughout the ranges of the four species have been damaged or eliminated. As a result, the Service concludes that the continued survival and recovery of the three fairy shrimp and the vernal pool tadpole shrimp only can be assured, at this time, by the preservation of extant vernal pools and their associated watersheds.

Issue 29: Several comments were received questioning the relationship between the Endangered Species Act and the Fifth Amendment to the U.S. Constitution (e.g., "taking" without just compensation).

Service Response: The mere promulgation of a regulation, such as the enactment of a statute, is rarely sufficient to establish that private property has been taken unless the regulation on its face denies the property owner the economically viable use of his property. Listing pursuant to the Endangered Species Act does not automatically restrict all uses of one's land. A property owner cannot establish that his property has been taken as a result of a regulatory action such as the listing of a species until he has first submitted a proposal to develop the property and has received a determination as to the level of development that will be allowed. The property owner must apply for all available permits and waivers before a taking could potentially be established. With respect to listing, this means that no takings can be established until the property owner complies with section 10(a) of the Act and the Service concludes that no permit to take incidental to an otherwise lawful activity will be issued.

Issue 30: The Service received a comment that requested an explanation of the applicability of *Hoffman Homes Inc.* v. *EPA* to vernal pools.

Service Response: Hoffman Homes Inc. v. *EPA*, 916 F.2d 1310 (7th Cir. 1992) held that an isolated wetland, with no shown effect on interstate commerce, was not within EPA's nor the Corps of Engineers' jurisdiction to regulate. That decision was vacated in the same year (*Hoffman Homes Inc.* v. *EPA*, 975 F.2d 1554) and the issue reheard by the same court in 1993 (*Hoffman Homes Inc.* v. *EPA*, 999 F.2d 256). In its final interpretation of the issues presented in that case, the court held that waters whose use, degradation, or destruction *could* affect interstate commerce, were waters appropriately regulated by EPA and/or the Corps (emphasis added). Based upon the facts as presented in that case, however, the court could not find sufficient evidence to support a conclusion that the wetland in question could potentially affect interstate commerce. As such, the court determined this particular water body to be outside the realm of EPA or Corps jurisdiction.

The Service is not aware how the EPA or Corps view this case relative to vernal pools. Regardless of the interpretation, however, it is the animal (as opposed to habitat) for which the Endangered Species Act will afford protection with this final regulation. Should it be determined that neither the Corps nor EPA have jurisdiction over these wetlands, and that section 7 is not therefore applicable, then the property owner may comply with the Endangered Species Act through section 10 of the Act.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Conservancy fairy shrimp (*Branchinecta conservatio* Eng *et al.*), longhorn fairy shrimp (*Branchinecta longiantenna* Eng *et al.*), and the vernal pool tadpole shrimp (*Lepidurus packardi* Simon) should be classified as endangered species; and the vernal pool fairy shrimp (*Branchinecta lynchi* Eng *et al.*) should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool fairy shrimp (*Branchinecta lynchi*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of their habitat or range.* All three fairy shrimp and the vernal pool tadpole shrimp are restricted to vernal pools in California. The habitat of these animals is imperiled by a variety of human-caused activities, primarily urban development, water supply/flood control activities, and conversion of land to agricultural use. Habitat loss occurs from direct destruction and modification of pools due to filling, grading, discing, leveling, and other activities, as well as modification of surrounding uplands that alters vernal pool watersheds.

Rapid urbanization of areas containing vernal pools poses a significant threat to the four species included in this final rule. In the Central Valley, at least five pool complexes that were known to contain suitable habitat for the vernal pool fairy shrimp and the vernal pool tadpole shrimp were eliminated by urban development in the late 1980's. Mitigation measures were either lacking or unsuccessful. In general, the growth rate of human populations and associated urban development throughout the Central Valley is equal to or exceeds that of any other region in California. Indicative of this growth rate are proposals to develop several new towns within the ranges of the vernal pool fairy shrimp and the vernal pool tadpole shrimp. As an example, two towns proposed in Placer and San Joaquin Counties would support 80,000 and 44,000 people, respectively, and likely would impact significant amounts of vernal pool habitat for these species (Laver 1991, Wiegand 1991).

Vernal pools in the Redding area that likely provided habitat for the vernal pool fairy shrimp and the vernal pool tadpole shrimp have been impacted significantly by urban development and agricultural conversion. Aerial photographs of an approximately 61-hectare (150 acre) area near the Redding Municipal Airport document that development occurring between 1952 and 1992 resulted in the loss of 62 percent and the degradation of 37 percent of the original vernal pools in this vernal pool complex (Jim Nelson, California Fish & Game, pers. com., 1993). The remaining pools at this site are inhabited by the vernal pool fairy shrimp and the vernal pool tadpole shrimp. Vernal pool areas around the airport have been zoned for enterprise, and sewer lines have been installed in anticipation of development. Several proposed residential development projects in the Redding area (e.g., Argyle West and Eagle Crest projects) also would adversely affect the vernal pool fairy shrimp and the vernal pool tadpole shrimp. A proposed electrical transmission line also threatens several pools in the area. Eucalyptus farms have been established on many historic vernal pool sites around Redding and future groves are planted at the rate of approximately 810 hectares (2,000 acres) per year (J. Nelson, California Department of Fish and Game, pers. comm. 1993).

In the Chico area, certain areas inhabited by the vernal pool tadpole shrimp recently were ditched and drained (Patrick Kelly, Mount Lassen Chapter of the California Native Plant Society, *in litt.*, 1992). In addition, at least four residential developments proposed in Chico, including the Simmons Ranch, Foothill Park, Sierra Technology, and Bidwell Ranch projects are proposed that would eliminate approximately 810 hectares (2,000 acres) of habitat containing vernal pools inhabited by the vernal pool tadpole shrimp. No specific mitigation measures are included in these projects for this animal.

Numerous residential and commercial development projects in the Sacramento area pose a severe threat to vernal pool complexes inhabited by populations of the vernal pool fairy shrimp and vernal pool tadpole shrimp. These proposed and ongoing projects, sponsored by Federal, State and local agencies, private interests, and local governments, include, but are not limited to the closure of Mather Air Force Base, modifications to Strawberry, Elk Grove, and Laguna Creeks, two proposed surface gravel mines, and numerous residential developments including the Elliot Ranch South, Churchill Downs, Elk Ridge Estates, and Sunrise-Douglas projects.

Urban development and agricultural conversion imperil populations of the vernal pool fairy shrimp and vernal pool tadpole shrimp in the San Joaquin Valley. Castle Air Force Base is undergoing closure and the U.S. Bureau of Prisons has proposed to build a prison on vernal pools at this site known to contain the two fairy shrimp. The Corps has proposed the Merced County Streams project that would facilitate urban development in many areas that provide suitable habitat for the vernal pool fairy shrimp and the vernal pool tadpole shrimp. Numerous projects between Stockton and Bakersfield also would adversely impact the three species, including the Mueller Ranch gravel mine in Stanislaus County, a number of residential developments in San Joaquin County (e.g., the Liberty project would affect approximately 2,000 vernal pools), the Yosemite Lake project in Merced County, and the Ball Ranch project in Fresno County.

Areas in the San Francisco Bay area that contain vernal pools also are undergoing substantial urban development. Vernal pools inhabited by the vernal pool fairy shrimp in the Livermore area of Alameda County have been adversely impacted by urban development, agriculture, and alteration of the hydrology of Altamont Creek (Alan Launer, Stanford University Center for Conservation Biology, *in litt.*, 1992). The City of Livermore is evaluating land use options that could result in the conversion of 3,002 hectares (7,420 acres) of natural habitat, including vernal pools that provide suitable habitat for the vernal pool fairy shrimp, to urban use for up to 30,000 people (City of Livermore 1992; Susan Frost, Livermore Planning Department, pers. comm., 1993). The proposed expansion of the municipal airport at Byron Hot Springs in eastern Contra Costa County will eliminate a number of pools inhabited by the vernal pool fairy shrimp.

Other vernal pools located in San Luis Obispo County, including most of the known populations of the longhorn fairy shrimp and at least one population of the vernal pool fairy shrimp, are located in subdivided areas with constructed roads and lots for sale and development (Eng *et al.* 1990; Dave Chipping, Amateur biologist, *in litt.*, 1992). To date, some of the sites have been cleared and continued habitat loss is ongoing or impending. The Coastal Branch Phase II (Coastal Aqueduct) of the State Water Project, proposed by the California Department of Water Resources (Carol Nelson, California Department of Water Resources, *in litt.*, 1993), annually would convey 70,000 acre-feet of water from the Delta region of California to San Luis Obispo and Santa Barbara Counties. It is unclear if this source of water would allow urban development of the Soda Lake area, however, the longhorn fairy shrimp and the vernal pool fairy shrimp may be adversely affected by commercial development made possible by this project.

A 36-hectare (14 acre) vernal pool located at Skunk Hollow in Riverside County containing a population of the vernal pool fairy shrimp likely will be adversely affected by urban development and possibly agricultural conversion (Art Davenport, Fish and Wildlife Service, pers. comm., 1994; Joseph Jolliffe, Riverside County Planning Department, *in litt.*, 1992). The Rancho Bella Vista residential project would impact this vernal pool and, along with other major roadways, also impact the surrounding watershed (Joseph Jolliffe, *in litt.*, 1992). Skunk Hollow also contains a population of the Riverside fairy shrimp (*Streptocephalus woottoni*), an endangered species (58 FR 41384).

Because of rapid urbanization, several highway projects are proposed that may affect the vernal pool fairy shrimp and the vernal pool tadpole shrimp. Vernal pools in the Sacramento area inhabited by the vernal pool fairy shrimp and the vernal pool tadpole shrimp would be affected adversely by the proposed widening of State Highway 16 in Sacramento County. The State of California has proposed to extend State Highway 505 from Vacaville to Collinsville in Solano County; this project directly and/or indirectly would impact vernal pools inhabited by the Conservancy fairy shrimp and the vernal pool tadpole shrimp (C. Goude, pers. comm., 1993). Vernal pools inhabited by the vernal pool tadpole shrimp may be affected by improvements to Highway 70 near Gridley in Butte County (Chris Collison, California Department of Transportation, pers. comm., 1993).

Agricultural conversion poses a widespread threat to remaining vernal pools in the Central Valley. Sites containing fairy shrimp near Pixley in Tulare County and Haystack Mountain in Merced County are pockets of privately owned habitat remnants threatened by surrounding agricultural operations (Eng *et al.* 1990). A 148-hectare (365 acres) site with vernal pools adjacent to State Highway 41 north of Fresno in Fresno County that likely contained the vernal pool fairy shrimp was disced and graded in 1992 (Dames and Moore 1992). Two sites with vernal pools in the Sacramento Valley recently were plowed or disced and seeded with winter wheat, apparently in preparation for future urban development (C. Goude, pers. comm., 1993). Almond and fruit orchards in Stanislaus, Madera, and Fresno Counties continued to be planted in habitat suitable for the vernal pool fairy shrimp and the vernal pool tadpole shrimp (J. King pers. comm. 1993; K. Geer and J. Browning, U.S.F.W.S., pers. obs. 1994).

Water supply/flood control activities also generally present a degree of disturbance to affected pools that would preclude survival of any substantial fraction of the populations. The timing, frequency, and length of inundation of the vernal pool habitat are critical to the three fairy shrimp and the vernal pool tadpole shrimp; any substantial hydrologic change in these factors adversely affect the four species. Diversion of watershed runoff feeding the pools can result in premature pool dry-down before the life cycle of these animals is completed. The three species of fairy shrimp and the vernal pool tadpole shrimp also are intolerant of flowing water that washes away the egg bank. Supplemental water from outside the natural watershed into vernal pools can change the habitat into a marsh-dominated or a permanent aquatic community that is unsuitable for the

four species of vernal pool shrimps. The modification of vernal pool areas to create artificial reservoirs, such as the Modesto Reservoir and Turlock Lake in Stanislaus County, have led to the extirpation of the vernal pool tadpole shrimp population that was known to occur in the vernal pools where these reservoirs now lie (J. King, pers. comm., 1993). Vernal pool watershed areas have been reduced by conversion of uplands to paved or grass-turf surfaces, by damming of swales caused by road construction, or other construction activities. Physical barriers, such as roads and canals, unsuitably deepen a vernal pool upstream of a barrier, and can isolate a fairy shrimp or vernal pool tadpole shrimp population from a portion of its aquatic habitat. Surface runoff, including non-point runoff, is altered by disturbance from trenching, grading, scraping, off-road vehicles, intensive livestock grazing, or other activities that change amounts, patterns, and direction of surface runoff to ephemeral drainages. Presence of summer water also affects the hydrologic pattern. Introduction of water during the summer disrupts the life cycles of the fairy shrimp and the vernal pool tadpole shrimp by subjecting them to greater levels of predation by animals requiring more permanent sources of water. Increased water also converts vernal pools to unsuitable marsh habitat dominated by emergent vegetation (e.g., cattails).

Direct and associated indirect impacts from the proposed Los Vaqueros Project, a water-storage project in the Kellogg Creek watershed of eastern Contra Costa County, would adversely impact two vernal pool complexes that support the highest diversity of fairy shrimp in the State (California Department of Fish and Game 1983). The rock pools in this area are inhabited by the vernal pool fairy shrimp and the longhorn fairy shrimp (John Gregg, Los Vaqueros Project, *in litt.*, 1992). Proposed construction of a major roadway, high-pressure natural gas and petroleum pipelines, and 230,000 kV electrical transmission lines at the Los Vaqueros Reservoir site would adversely affect these species (Jones and Stokes Associates 1986, 1989, 1990, 1991).

Several proposed utility projects have the potential to affect all of the three fairy shrimp and the vernal pool tadpole shrimp. For example, the Pacific Gas Transmission Company—Pacific Gas and Electric natural gas pipeline project extending from the Canadian border along the west side of the Sacramento Valley to Fresno County has adversely impacted a number of vernal pools containing the vernal pool fairy shrimp, Conservancy fairy shrimp, and the vernal pool tadpool shrimp (Federal Regulatory Energy Commission 1991; Arnold 1990; C. Nagano, pers. obs., 1992 and 1993). The Service has issued a conference opinion to the Federal Energy Regulatory Commission on a portion of this project that will adversely impact the vernal pool fairy shrimp; however, the applicant has indicated the mitigation measures will not be implemented if the species is not listed (John Cassady, PGT–PG&E Pipeline Expansion Project, *in litt.*, 1993).

Off-road vehicle (ORV) use also imperils fairy shrimp and the vernal pool tadpole shrimp inhabiting vernal pools (Bauder 1986, 1987). ORVs cut deep ruts, compact soil, destroy native vegetation, and alter pool hydrology. Fire fighting, security patrols, military maneuvers, and recreational activities cumulatively have damaged vernal pool habitats in many areas (Bauder 1986, 1987). In Solano County, an off-road vehicle park adjacent to the Jepson Prairie Reserve owned by the Nature Conservancy could adversely impact populations of the Conservancy fairy shrimp and the vernal pool tadpole shrimp.

Other secondary impacts associated with urbanization include disposal of waste materials into habitat for the four species included in this final rule (Bauder 1986, 1987). Disposal of concrete, tires, refrigerators, sofas, and other trash adversely affects these animals by eliminating habitat, disrupting pool hydrology or, in some cases, through release of toxic substances. Dust and other forms of air or water pollution from commercial development or agriculture projects also may be deleterious to these animals.

Filling of vernal pool wetlands without authorization from the Corps also poses a threat to these species (Tricia Richards, Sacramento County Planning and Community Development Department, *in litt*, 1991: D. Strait, pers. comm., 1993). In Stanislaus County, a site with 61 hectares (150 acres) of vernal pool habitat that was potentially inhabited by the vernal pool fairy shrimp was converted to irrigated pasture in 1990 (Martha Naley, U.S. Fish and Wildlife Service, pers. comm., 1991). A 112 hectare (275 acre) site containing vernal pool and swale habitat for the vernal pool tadpole shrimp in the Jepson Prairie area in Solano County was destroyed by discing in October 1992 (C. Nagano and J. Knight, pers. obs., 1992).

The Service is aware of 10 actions in the last 2 years in the Sacramento Valley, including agricultural conversion and urban development, that have resulted in the damage or destruction of as many as 17 hectares (43 acres) of vernal pools, exclusive of associated watersheds, that likely provided habitat for the vernal pool fairy shrimp and vernal pool tadpole shrimp (Dan Strait, U.S. Fish and Wildlife Service pers. comm., 1993). Some of these activities were undertaken without authority under the Clean Water Act. At least one of these parties likely intended to alter the elevations of the site to eliminate one or more of the parameters used by the Corps to define a wetland according to their 1987 jurisdictional manual. Other similar deliberate activities that are damaging or destroying vernal pools are likely occurring throughout the Central Valley (D. Strait, pers. comm., 1993). The Service is concerned that unless a final rule for the four species is issued and effective immediately upon publication, this may result in landowners knowingly destroying the habitat of these animals. Previously, this has occurred with other endangered species that inhabit vernal pools in the Santa Rosa area of Sonoma County (C. D. Nagano and J. C. Knight, U.S. Fish and Wildlife Service, pers. obs., 1992). Because of the immediate threat posed by these on-going activities, the Service finds that good cause exists for this rule to take effect immediately upon publication in accordance with 5 U.S.C. 553(d)(3).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not known to be applicable.

C. *Disease or predation.* The three fairy shrimp and the vernal pool tadpole shrimp are a food item in the diet of migratory waterfowl and other native animals (Krapu 1974; Swanson *et al.* 1974; J. King, pers. comm., 1992). However, this naturally occurring predation is not considered a threat to the continued existence of these crustaceans.

Introduction of the bullfrog (*Rana catesbeiana*) to areas inhabited by the vernal pool tadpole shrimp appears to increase the threat of predation facing this crustacean. These amphibians are voracious predators on many species of native and exotic animals. Large numbers of vernal pool tadpole shrimp were found in stomach content analysis of bullfrogs captured in vernal pools in the Chico area (Marc Hayes, Oregon State University, pers. comm., 1993; Robert Fisher, University of California, pers. comm., 1993). Although bullfrogs are unable to establish permanent breeding populations in vernal pools, dispersing immature males take up residence in these areas during the rainy

season (Mark Jennings, U.S. National Biological Survey, pers. comm. to Peter Sorensen, 1994). A number of bullfrogs were observed at Jepson Prairie during the winter of 1992/1993 (C. Nagano, pers. obs. 1992/93).

Vernal pool tadpole shrimp were found to have been parasitized by flukes (Trematoda) of an undetermined species at the Vina Plains, Tehama County (Ahl 1991). The gonads of both sexes were greatly reduced in size and their body cavities were filled with many young flukes (metacercariae). Ahl concluded that parasitic castration was the major limiting factor affecting reproduction of the vernal pool tadpole shrimp at the Vina Plains. The range and extent of this parasite is unknown.

There are no known diseases affecting the three fairy shrimp and the vernal pool tadpole shrimp.

D. *The inadequacy of existing regulatory mechanisms.* The primary cause for the decline of these species is loss of habitat from human activities. State and local laws and regulations have not been passed to protect the four species included in this final rule. Other regulatory mechanisms necessary for the conservation of vernal pools have proven inadequate and ineffective.

The environmental review process under the California Environmental Quality Act for projects that result in loss of habitats that support these animals sometimes requires development and implementation of mitigation plans. However, the effectiveness of this statute in protecting vernal pool habitat has not been consistent. As documented above, fairy shrimp and vernal pool tadpole shrimp habitat typically has been eliminated without offsetting mitigation measures. Most mitigation plans that have been required were designed specifically for vernal pool plants. The artificial creation of vernal pools as compensatory mitigation has not been proven scientifically to be successful (Ferren and Gevirtz 1990; Zedler and Black 1988; J. King, *in litt.*, 1992; M. Simovich, *in litt.*, 1992; R. Brusca, *in litt.*, 1992).

Under section 404 of the Clean Water Act, the Corps regulates the discharge of fill material into waters of the United States, which include navigable waters, wetlands (e.g., vernal pools), and other waters. The Clean Eater Act requires project proponents to obtain a permit from the Corps prior to undertaking many activities (grading, discharge of soil or other fill material, etc.) that would result in fill of wetlands. The Corps promulgated Nationwide Permit 26 to address fill of isolated or headwater wetlands totalling less than 4 hectares (10 acres). Under Nationwide Permit 26, proposals that involve fill of wetlands less than one acre are considered authorized. Where fill would aversely modify between 0.4 and 4.0 hectares (one and 10 acres) of wetland, the Corps circulates for comment a predischarge notification to the Service and other interested parties to determine whether or not an individual permit should be required for fill activity and associated impacts.

Individual Corps permits are required for discharge of fill material that would fill or adversely modify greater than 4 hectares (10 acres) of wetlands. The review process for individual permits is more rigorous than for nationwide permits. Unlike nationwide permits, an analysis of cumulative wetland impacts is required for individual permit applications. Resulting permits may include special conditions that require potential avoidance or mitigation for environmental impacts. On nationwide permits, the Corps has discretionary authority to require an individual permit if the Corps believes that resources are sufficiently important, regardless of the wetland's size. In practice, however, the Corps generally does not require an individual permit when a project qualifies for a nationwide permit, unless a threatened or endangered species or other significant resources would be adversely affected by the proposed activity. Most vernal pools and swales within the range of these three species of fairy shrimp and the vernal pool tadpole shrimp encompass less that 4 hectares (10 acres). The discontinuous distribution of these sites has allowed some landowners to divide large projects into several smaller projects. Wetland acreage on these smaller projects is usually under 4 hectares (10 acres), and therefore, most projects qualify for Nationwide Permit 26. Discing and other farming or ranching practices, including overgrazing, can destroy vernal pool habitat without a permit from the Corps because many of these activities are exempt from regulation under the Clean Water Act. The discontinuous configuration of the pools and swales further obscures separation of these wetland losses.

The Sacramento District of the Corps has several thousand vernal pools under its jurisdiction (Coe 1988), which includes most of the geographic range encompassing the four species listed herein. Areas occupied by these animals are undergoing rapid urbanization and current trends indicate 60 to 70 percent of these pools could be destroyed in the next 10 to 20 years (Coe 1988).

The Conservancy fairy shrimp, vernal pool fairy shrimp, and the vernal pool tadpole shrimp are found in vernal pools within the Vina Plains in Tehama County. They likely are found in the vicinity of ephemeral swales and drainages that support *Limnanthes floccosa* ssp. *calfornica* (Butte County meadowfoam). This plant was listed as an endangered species on June 8, 1992 (57 FR 24192). These crustaceans could be protected indirectly by actions taken to conserve the Butte County meadowfoam. A "conservation plan" has been drafted for the City of Chico (Jokerst 1989) that details various actions designed to conserve the plant, such as creation of a preserve system. However, the draft plan does not address plant populations and vernal pool habitat outside city limits. Moreover, the City of Chico has yet to adopt the plan. Meanwhile, typical of other vernal pool areas, the Corps continues to use nationwide permits to authorize numerous residential developments in the Chico area.

The Conservancy fairy shrimp and the longhorn fairy shrimp each have portions of one population on lands under public ownership. Portions of four populations of the vernal pool fairy shrimp are on lands under public ownership. Portions of eight populations of the vernal pool tadpole shrimp are on lands under public ownership. The Nature Conservancy owns or controls portions of vernal pool habitat, including Jepson Prairie in Solano County, Vina Plains in Tehama County, the Carrizo Plain in San Luis Obispo County, and Santa Rosa Plateau area in Riverside County. All three fairy shrimp species and the vernal pool tadpole shrimp occur on Conservancy property. Management plans for some Federal, State, local, and Conservancy properties include provisions to protect vernal pools but none specifically address these species. Surrounding privately owned vernal pool habitat and watershed are not protected.

E. *Other natural or man-made factors affecting their continued existence.* The pools and, in some cases, pool complexes supporting the fairy shrimp species and the vernal pool tadpole shrimp are usually small and unforeseen natural and man-caused catastrophic events threaten the elimination of some sites. Many of the known populations of the four species are comprised of single or less than five pools (e.g., 3 of 6 Conservancy fairy shrimp populations, 1 of 3 longhorn fairy shrimp populations, 20 of 34 vernal pool fairy shrimp populations, 1 of the 18 vernal pool tadpole shrimp populations). In many cases, these

populations are remnants of larger, multi-pool populations that originally existed in historic vernal pool complexes. Such populations are important for their genetic uniqueness, which has been documented for the Conservancy fairy shrimp and the vernal pool tadpole shrimp (Fugate 1993; J. King pers. comm. 1992). However, these important populations are those that have the most tenuous chances for long-term persistence due to population bottlenecks in conjunction with low gene flow between populations (J. King pers. comm. 1993). Additionally, some of the areas with the largest populations (i.e., greatest number of vernal pools remaining in pool complexes) are currently under threat of fragmentation by numerous proposed projects (e.g., Sacramento and Placer Counties).

The four crustaceans in these small habitat patches are vulnerable to random fluctuations or variation (stochasticity) due to annual weather patterns and availability of food and other environmental factors superimposed on the cumulative threats described throughout this rule. The populations of the four species are isolated from other conspecific populations and are distributed in discontinuous vernal pool systems. Such populations are vulnerable to stochastic extinction. The breeding of closely related individuals may cause genetic problems in small populations of the four species, particularly in the expression of deleterious genes (known as inbreeding depression). Individuals and populations possessing deleterious genetic material are less able to cope with environmental conditions and adapt to environmental changes, even relatively minor ones. Further, small populations are subject to the effects of genetic drift (the random loss of genetic variability). The phenomenon also reduces the ability of individuals and populations to respond successfully to environmental stresses. Overall, these genetic factors could influence the survivability of isolated populations of each of the three fairy shrimp and the vernal pool tadpole shrimp.

The Service has carefully assessed the best scientific and commercial information regarding past, present, and future threats faced by these species in determining to issue this final rule. Based on this evaluation, the preferred action is to list the Conservancy fairy shrimp, longhorn fairy shrimp, and the vernal pool tadpole shrimp as endangered; and the vernal pool fairy shrimp as threatened. The three fairy shrimp and the vernal pool tadpole shrimp are imperiled by rapid urbanization, conversion of land to agricultural use, off-road vehicle use, and changes in hydrologic patterns in areas they occupy. Only a small proportion of the pools are permanently protected from these threats. Numerous ongoing and proposed development projects pose an imminent threat to the three fairy shrimp and the vernal pool tadpole shrimp. Extraordinary increases in human populations and associated pressures from urban development have rendered existing regulatory mechanisms inadequate. Stochastic events, which commonly affect small isolated populations, also may result in extirpation of some populations of these species. Four of the six known populations of the Conservancy fairy shrimp are imperiled. There are threats to the four known populations of the longhorn fairy shrimp. Twenty-eight of the 32 known populations of the vernal pool fairy shrimp are under threat. Fourteen of the 18 known populations of the vernal pool tadpole shrimp are imperiled. Because the Conservancy fairy shrimp, longhorn fairy shrimp, and the vernal pool tadpole shrimp are in danger of extinction throughout all or a significant portion of their ranges, these species fit the definition of endangered as defined in the Act. Because the vernal pool fairy shrimp is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, this species fits the definition of threatened as defined in the Act.

The Service considers the change in the listing status from endangered to threatened of the vernal pool fairy shrimp to be warranted based on two factors. Since the proposed rule was published, data gathered by Sugnet and Associates (1993b) and information otherwise available to the Service indicate that the geographic extent and number of populations and subpopulations of this species are larger than was originally known. The distribution of the species is not so fragmented as to reduce the likelihood of recolonization. As mentioned previously in this final rule, recolonization following stochastic local extinctions is probably a determining factor for the long-term persistence of this species.

Taking this information into consideration, as well as the actions discussed under factors A, C, D, and E in the "Summary of Factors Affecting the Species" section of this rule, the Service finds that the vernal pool fairy shrimp is not in imminent danger of extinction but is likely to become so in the foreseeable future throughout all or a significant portion of its range.

Designation of critical habitat for the vernal pool fairy shrimp, longhorn fairy shrimp, Conservancy fairy shrimp, and the vernal pool tadpole shrimp is not prudent at this time for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the same time the taxa are listed. The Service finds that designation of critical habitat is not prudent for these species at this time. Because the three fairy shrimp and vernal pool tadpole shrimp face numerous anthropogenic threats (see Factor A in "Summary of Factors Affecting the Species"), the publication of precise maps and descriptions of critical habitat in the **Federal Register** would make these species more vulnerable to incidents of vandalism and, therefore, would contribute to the decline of these species. A number of sites inhabited by the four species occur on private land that is undergoing rapid urban and agricultural development. As documented above, some areas have been destroyed to eliminate vernal pool characteristics and escape regulatory jurisdiction by the Corps. The proper agencies have been notified concerning management requirements of these animals. Protection of the habitat of these species will be addressed through the recovery, section 7 consultation, and incidental take permitting processes. Federal involvement in areas where these animals occur can be identified without designation of critical habitat. Therefore, the Service finds that designation of critical habitat for these animals is not prudent at this time, because such designation likely would increase the degree of threat from vandalism or other human activities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, local, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires recovery actions be carried out for all listed species. Such actions are initiated following listing. The protection required of Federal agencies and the

prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

As described above, the U.S. Army Corps of engineers exerts section 404 jurisdiction over habitats supporting these animals. Nationwide permits are not valid where a federally listed endangered or threatened species would be affected by the proposed project. When listed species may be affected, formal consultation is required pursuant to section 7 of the Act before nationwide permits become effective. In addition, the Department of Housing and Urban Development (HUD) may insure housing loans in areas that presently support these animals; HUD actions regarding these loans also would be subject to review by the Service under section 7 of the Act.

Other Federal agencies that possibly could be affected if these animals are listed include the U.S. Air Force, U.S. Department of Agriculture (Farmers Home Administration), Veterans Administration, and the Department of Transportation (Federal Highways Administration). Populations of the longhorn fairy shrimp, vernal pool fairy shrimp, and the vernal pool tadpole shrimp occur on property owned by the Bureau of Land Management at the Carrizo Plain in San Luis Obispo County; and the U.S. Air Force at Castle Air Force Base, Mather Air Force Base, and Beale Air Force Base.

The listing of these fairy shrimp and the vernal pool tadpole shrimp will also bring section 5 and 6 of the Endangered Species Act into effect. Section 5 authorizes acquisition of lands for the purposes of conserving endangered and threatened species. Pursuant to section 6, the Service would be able to grant funds to affected States for management actions aiding in protection and recovery of these animals.

Listing these fairy shrimp and the vernal pool tadpole shrimp as endangered provides for the development of a recovery plan (or plans) for them. Such plan(s) will bring together State and Federal efforts for conservation of the animals. The plan(s) will establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan(s) will set recovery priorities and estimate costs of various tasks necessary to accomplish them. They also will describe site-specific management actions necessary to achieve conservation and survival of the fairy shrimp and the vernal pool tadpole shrimp.

The Act and implementing regulations found at 50 CFR 17.21 for endangered species and 17.31 for threatened species set forth a series of prohibitions and exceptions that apply to all endangered wildlife and to threatened wildlife not covered by a special rule. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any such species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions can apply to agents of Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened animal species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. For endangered species, such permits are available for scientific purposes, to enhance the propagation or survival of the species, to alleviate economic hardship in certain circumstances, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes or other purposes consistent with the purposes of the Act. Further information regarding regulations and requirements for permits may be obtained from the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (503/231–2063; FAX 503/231–6243).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available, upon request, from the Field Supervisor, Sacramento Field Office, (see **ADDRESSES** section).

Authors

The primary authors of this final rule are Chris Nagano and Jim Browning, Sacramento Field Office, 2800 Cottage Way Room E–1823, Sacramento, California 95825 (916/978–4866).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding in the table the following in alphabetical order under CRUSTACEANS to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
CRUSTACEANS							
*	*	*	*	*	*		*
Shrimp, Conservancy fairy.	*Branchinecta conservatio.*	U.S.A. (CA)	NA	E	549	NA	NA
*	*	*	*	*	*		*
Shrimp, longhorn fairy.	*Branchinecta longiantenna.*	U.S.A. (CA)	NA	E	549	NA	NA
*	*	*	*	*	*		*
Shrimp, vernal pool fairy.	*Branchinecta lynchi* .	U.S.A. (CA)	NA	T	549	NA	NA
Shrimp, vernal pool tadpole.	*Lepidurus packardi* ..	U.S.A. (CA)	NA	E	549	NA	NA

Dated: August 31, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–23156 Filed 9–16–94; 8:45 am]

BILLING CODE 4310–55–P–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposal To Determine a Crustacean, the California Linderiella, an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of withdrawal.

SUMMARY: The U.S. Fish and Wildlife Service (Service) withdraws the proposal to list the California linderiella (*Linderiella occidentalis*), as an endangered species under the Endangered Species Act of 1973, as amended (Act). Additional information that has become available to the Service since the publication of the proposed rule reveals that the species is more abundant than previously known. The Service has considered the additional information and determined that this species is not likely to become either endangered or threatened throughout all or a significant portion of its range in the foreseeable future, and it does not qualify for listing under the Act.

EFFECTIVE DATES: The proposed action of May 8, 1992, to list *Linderiella occidentalis* as endangered is withdrawn on September 19, 1994.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way Room E–1823, Sacramento, California 95825–1846.

FOR FURTHER INFORMATION CONTACT: Chris Nagano at the above address or by telephone (916/978–4866).

SUPPLEMENTARY INFORMATION:

Background

On May 8, 1992, the Service published in the **Federal Register** (57 FR 19856) a proposal to list five species of crustaceans from vernal pools in California as endangered or threatened species. The California linderiella was included in this proposal. During the comment period on the proposal, additional information was received regarding the California linderiella indicating that populations exist north and west of the previously known range, and more vernal pools containing subpopulations of this species also were located. The Service has considered the new information and determined that the species does not warrant listing under the Act. The Service places this animal in category 3C of the animal notice of review. Category 3C species are species for which information now in the possession of the Service indicates that the species is more abundant or widespread than previously believed. If further research or changes in the habitat indicate a significant decline in the species, it may be reevaluated for possible inclusion in categories 1 or 2. A final rule listing the other four crustacean taxa included in the proposal is published in the **Federal Register** concurrently with this notice of withdrawal of California linderiella.

Author

The primary author of this notice is Chris Nagano (see **ADDRESSES** section).

Authority

The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 31, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–23157 Filed 9–16–94; 8:45 am]

BILLING CODE 4310–55–P

federal register

Monday
September 19, 1994

Part VI

Department of Health and Human Services

National Institutes of Health

National Institutes of Health Acquired Immunodeficiency Syndrome (AIDS) Research Loan Repayment Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

RIN 0905-ZA59

National Institutes of Health Acquired Immunodeficiency Syndrome (AIDS) Research Loan Repayment Program

AGENCY: National Institutes of Health, Public Health Service, HHS

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) announces the availability of educational loan repayment under the National Institutes of Health Acquired Immunodeficiency Syndrome (AIDS) Research Loan Repayment Program. The Program, which is authorized by section 487A of the Public Health Service (PHS) Act (42 U.S.C. 288–1), as added by the Health Omnibus Programs Extension Act of 1988 (Pub. L. 100–607) and amended by the National Institutes of Health Revitalization Act of 1993 (Pub. L. 103–43), provides for the partial repayment of the accumulated educational loan debt of health professionals who agree to conduct, as employees of the NIH, research with respect to AIDS. The Program provides for the repayment of up to $20,000 of the principal and interest of the educational loans of such health professionals for each year of obligated service. The purpose of the program is the recruitment and retention of highly qualified health professionals conducting AIDS research as NIH employees. The NIH, through this notice, invites health professionals interested in engaging in AIDS research as NIH employees to apply for participation in the NIH AIDS Research Loan Repayment Program.

DATES: Interested persons may request information about the Program beginning on September 19, 1994.

ADDRESSES: Information regarding the requirements and application procedures for the Program may be obtained by calling or writing: Mr. Marc Horowitz, Director, NIH AIDS Research Loan Repayment Program, Office of AIDS Research, National Institutes of Health, Federal Building, Suite 102, 7550 Wisconsin Avenue, Bethesda, Maryland 20892–9905 (1–800–528–7689).

SUPPLEMENTARY INFORMATION: The National Institutes of Health Revitalization Act of 1993 (Public Law 103–43) was enacted on June 10, 1993, amending section 487A of the Public Health Service (PHS) Act (42 U.S.C. 288–1). Section 487A directs the Secretary to continue a program of entering into agreements with appropriately qualified health professionals under which such health professionals agree to conduct, as employees of the NIH, research with respect to acquired immunodeficiency syndrome (AIDS) in consideration of the Federal Government agreeing to repay, for each year of service, not more than $20,000 of the principal and interest of the educational loans of such health professionals. This program is known as the NIH AIDS Research Loan Repayment Program.

Under the Program, the NIH will repay qualified educational loan debt incurred by health professionals to pay for their undergraduate, graduate, and/or medical educational expenses. Upon application, individuals must have total qualified debt which will exceed 20% of their anticipated annual NIH salary ("debt threshold") on the date of program eligibility. Half of this debt threshold amount will not be repaid by the Program and will remain the obligation of the participant.

The remaining repayable debt of qualified health professionals will be satisfied at the rate of one-third per year, subject to a statutory limit of $20,000 per year, for each year of obligated service EXCEPT for individuals with repayable debt equal to or less than $10,000. These individuals will receive repayment of their repayable debt at the rate of one-half per year. Obligated service requires individuals selected to participate in the Program to agree to serve at least 2 years as an NIH employee engaged in qualified AIDS research. Participants may apply for renewal contracts in one-year increments to satisfy their remaining repayable debt.

In return for the repayment of their educational loans, participants must agree to (1) Engage *primarily* in qualified AIDS research as employees of the NIH for a minimum period of 2 years; (2) make payments to lenders on their own behalf for periods of Leave Without Pay (LWOP); (3) pay monetary damages as required for breach of contract; and (4) satisfy other terms and conditions of the Program's contract and application procedures. Applicants must submit a signed contract, prepared by the NIH, agreeing to obligated service at the time they apply for consideration under the Program. Substantial monetary penalties will be imposed for breach of contract.

Since program participation is contingent upon employment with the NIH, an individual who wishes to apply must obtain a written commitment from an Institute, Center, or Division (ICD) Personnel Office of the NIH to be employed in a qualified AIDS research position. Current deadlines, sources for assistance, and additional details regarding application procedures are published in an annual *Applicant Information Bulletin* which is available from the Director, AIDS Research Loan Repayment Program.

The Loan Repayment Committee (LRC), whose members are appointed by the Director, NIH, review, rank, and approve or disapprove the scientific portions of Loan Repayment Program applications. The LRC is composed of NIH scientific staff and chaired by the Associate Director for AIDS Research, NIH. Review and selection of applications for approval is based upon the following:

(1) The appropriateness of the research assignment to qualified AIDS research;

(2) The scientific merit of the research assignment; and

(3) The credentials of both applicant and supervisor and other criteria the Secretary deems appropriate.

Initial contracts will be executed to cover a two-year service period. At the conclusion of this initial contract, participants may be recommended for a one-year renewal contract, subject to review of their AIDS research accomplishments. These continuation contracts may be approved on a year-to-year basis. Funding of all contracts is contingent upon appropriation and/or allocation of funds from the U.S. Congress and/or the NIH.

The NIH will repay lenders for the principal, interest, and related expenses (such as the required insurance premiums on the unpaid balances of some loans) of qualified Government (Federal, State, local) and commercial educational loans obtained by participants for the following:

(1) Undergraduate, graduate, and health professional school tuition expenses;

(2) Other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and

(3) Reasonable living expenses, including the cost of room and board, transportation and commuting costs, and other reasonable living expenses as determined by the Secretary.

Repayments will be authorized quarterly for direct payment to lenders, following receipt of (1) The supervisor's verification of completion of the prior period of obligated service and (2) lender verification of the crediting of prior loan repayments, including the resulting account balances and current

account status. The NIH will repay loans in the following order unless significant savings would result from repaying loans in a different priority order:

(1) Health Education Assistance Loans (HEAL);

(2) Other loans guaranteed by the Federal Government; and

(3) Other qualifying loans.

The following loans are NOT repayable under the Program:

(1) Loans not obtained from a Government entity or commercial lending institution, such as loans from friends and relatives, or other private individuals;

(2) Loans for which contemporaneous documentation is not available; and

(3) Loans, or those portions of loans, obtained for educational or living expenses which exceed a "reasonable" level as determined by a review of the standard school budget for the year in which the loan was made.

In addition, for other programs which provide loans, scholarships, loan repayments, or similar awards in exchange for a future service obligation, the NIH will *NOT* repay any sums that may result from failure to serve as required or conversion of the obligation to a loan under these programs. This includes, but is not limited to the following:

(1) Physicians Shortage Area Scholarship Program;

(2) National Research Service Award Program;

(3) Public Health Service and National Health Service Corps Scholarship Programs;

(4) Armed Forces (Army, Navy, or Air Force) Health Professions Scholarship Programs; and

(5) Indian Health Service Scholarship Program.

Finally, payments will *not* be made under the Program for loans which participants have already repaid, delinquent loans, loans in default, loans not current in their payment schedule, or loans for which promissory notes have been signed after the program eligibility date. During lapses in loan repayments, due either to administrative complications or a break in service, Program participants are wholly responsible for making payments or other arrangements which maintain loans in a current payment status such that increases in either principal or interest do not occur. Penalties assessed participants as a result of NIH administrative complications may be considered for reimbursement.

Activities Constituting AIDS Research

The following parameters define whether a proposed research assignment meets the criteria for coverage under the NIH AIDS Research Loan Repayment Program—that is, whether the incumbent will be "primarily" engaged in AIDS research. "Primarily" engaged in AIDS research is defined as AIDS research activities that constitute at least 80% of a researcher's time. Clinical Associates, whose intent is to primarily engage in AIDS research, must engage in qualified AIDS research for at least three months in the first year of their program, with a total of fifteen months of qualified AIDS research during their two-year contract. AIDS researchers include registered nurses who are principal or associate investigators in AIDS research studies.

(1) AIDS research includes studies of the human immunodeficiency virus (HIV), the pathophysiology of HIV infection, the development of models of HIV infection and its sequelae, cofactors predisposing to HIV infection and AIDS, or its sequelae, and the development of vaccines and therapeutics. Specifically, the following research activities are included:

a. Studies of HIV and related retroviruses;

b. Studies of the mechanism(s) by which HIV and related retroviruses establish infection and infect host cells;

c. Studies of the mechanism(s) by which HIV and related retroviruses cause disease, including studies of the immune deficiency induced by HIV and related retroviruses;

d. Studies of the pathophysiology of host response to HIV infection;

e. Studies of *in vivo* or *in vitro* models of human HIV infection and its sequelae;

f. Epidemiologic studies of HIV and related retrovirus infection;

g. Clinical trials involving prophylaxis or therapy for HIV infection or its sequelae;

h. Preclinical studies aimed at the development of therapy for or prevention of HIV infection and the immunodeficiency caused by HIV infection and its sequelae;

i. Cofactors predisposing to acquiring HIV infection and/or the progression of HIV-related disease;

j. Basic studies and clinical trials involving vaccines, or other immunological or chemotherapeutic interventions for the prevention of HIV infection and its sequelae;

k. Studies into the transmission of HIV involving high risk behaviors and research concerning the interruption of transmission by behavioral change and pharmacologic intervention; and

l. Basic studies of the societal impact of and response to the HIV/AIDS epidemic, including subgroups within the population.

(2) AIDS researchers include scientists who are intellectually engaged in the process of providing scientific direction and guidance in programs of original AIDS research, specifically, epidemiologists, statisticians, and others who are involved in the design and conduct of research studies. The duties of such scientists may include the generation and design of studies and collation and analysis of data; and/or the preparation and publication, as author or co-author, of studies in peer-reviewed journals.

(3) AIDS researchers include physicians and registered nurses who are providing care for HIV-infected individuals who are subjects of HIV-related research.

Eligibility Criteria

Specific eligibility criteria with regard to participation in the NIH AIDS Research Loan Repayment Program include the following:

(1) Participants must be U.S. citizens, nationals, or permanent residents;

(2) Participants must have a Ph.D., M.D., D.O., D.D.S., D.M.D., D.V.M., B.S.N. or A.D.N., or equivalent degree;

(3) Participants must have qualifying educational debt in excess of 20 percent of their annual NIH salary at their expected date of program eligibility. In the case of U.S. Commissioned Corps employees, their NIH salary includes base pay plus quarters, subsistence, and variable housing allowances. Special and bonus pays, such as board certified, contract, and variable incentive pays, are not considered in the LRP's calculation of salary. For those employed under the Civil Service General Schedule, salary does not include Physicians Comparability Allowances (PCAs). However, PCA recipients who are accepted into the LRP will have their PCAs reduced by the amount of loan repayments to be received. The expected date of program eligibility is the date by which the following conditions will be met: (a) An applicant agrees to begin qualified AIDS research as a NIH employee, and (b) the Secretary is expected to execute their LRP contract;

(4) Participants must be considered employees of the NIH. The following are among those NOT considered NIH employees: (a) Visiting fellows (i.e. foreign scientists), (b) Intramural Research Training Award (IRTA) recipients, (c) National Research Service Award (NRSA) recipients, (d) Guest Researchers or Special Volunteers, (e) NIH-National Research Council (NRC) Biotechnology Research Associates

Program participants, and (f) Intergovernmental Personnel Act (IPA) participants;

(5) Participants may be appointed under a temporary or permanent employment mechanism, so long as their employment in an LRC-approved AIDS research assignment has the potential to last a minimum of 2 years;

(6) Individuals with existing service obligations to Federal, State, or other entities will not be considered for the Program unless and until the existing service obligation is discharged or deferred for the length of Program participation;

(7) Applicants will not be excluded from consideration under the Program on the basis of age, race, culture, religion, gender, disability, or other non-merit factors.

Additional Program Information

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs.

This program is subject to OMB clearance under the requirements of the Paperwork Reduction Act of 1980. A Request for OMB Review and Approval of information collection associated with the program is being prepared by the NIH.

The Catalog of Federal Domestic Assistance number for the Program is 93.936.

Dated: June 17, 1994.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 94–23135 Filed 9–16–94; 8:45 am]

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federal register

Monday
September 19, 1994

Part VII

Federal Communications Commission

Public Information Collection Requirement Submitted to Office of Management and Budget for Review; Notice

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

September 14, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037 (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission (202) 418–0214. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, room 10236 NEOB, Washington, DC 20503 (202) 395–3561.

Please note: The Commission has requested expedited OMB review of this item by September 21, 1994, under the provisions of 5 CFR 1320.18.

OMB Number: 3060–0604.

Title: Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Third Report and Order and Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, PP Docket No. 93–253 (47 CFR Part 24).

Action: Revised collection.

Respondents: Individuals or households, state or local governments, non-profit institutions and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement(s) and recordkeeping requirement.

Estimated Annual Burden: 10–17,770 responses, .50–20 hours average burden per response, 41,100 hours annual burden; 4,554 recordkeepers, 1 hour average burden per recordkeeper, 45,654 hours total annual burden.

Needs and Uses: On May 20, 1994, the OMB approved the collections of information contained in the Third Report and Order which established service-specific rules for competitive bidding on licenses to be awarded for Personal Communications Services in the 900 MHz band ("narrowband PCS") and the general procedural and processing rules for the narrowband PCS service. The Commission received seven petitions for reconsideration of the Third Report and Order and three oppositions and comments and on reply. Upon reconsideration, the Commission has clarified, modified and supplemented the original rules governing the auction of narrowband PCS licenses. For example, the Commission has modified its original definition of small business to include larger concerns, and has codified principles for attributing the interests of various affiliates of the applicant to that applicant. The Commission has also modified the various preferential measures that are available to certain entities designated by Congress, such as increasing the available bidding credits to 40% from 25% in some cases. In order to better ensure that applicants claiming these preferences are entitled to them and to aid the Commission's enforcement efforts, winning bidders are now required to supply additional information on the ownership of the applicant. The FCC Form 175, now permits applicants to amend their FCC Form 175 applications to reflect ownership changes that do not result in a change in control of the applicant. The Commission believes that the new and modified rules and requirements will facilitate the auction process and will increase the opportunities for designated entities to participate in the provision of narrowband PCS. The rules and requirements have been carefully crafted as to not unduly burden any applicant with unnecessary paperwork requirements. We estimate that each applicant will take an additional five (5) hours to comply with the new and modified paperwork requirements. If the normal 60-day OMB review and clearance process for information collections were followed, it would effectively impede the Commission's ability in achieving Congressional objectives of encouraging rapid deployment of service, efficient use of the spectrum, enhancing access to telecommunications services, and ensuring that spectrum based services are available to a wide range of consumers. It would also thwart the Commission's ability to recover for the public a portion of the value of the public spectrum. The result would be an unnecessary delay in the anticipated benefits to the public. The revised rule sections are in the following Appendix are provided in this notice as required by the Paperwork Reduction Act of 1980.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Appendix Rules

Part 24 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 24 continues to read as follows:

Authority: Secs. 4, 301, 302, 303, 309 and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 301, 302, 303, 309 and 332, unless otherwise noted.

2. Section 24.129 is revised to read as follows:

Section. 24.129 Frequencies

The following frequencies are available for narrowband PCS. All licenses on channels indicated with an (*) will be eligible for bidding credits of 25 percent, and all licenses indicated with an (**) will be eligible for bidding credits of 40 percent, as set forth in Section 24.309(b) of this part if competitive bidding is used to award such licenses.

(a) Eleven frequencies are available for assignment on a nationwide basis as follows:

(1) Five 50 kHz channels paired with 50 kHz channels:

Channel 1: 940.00–940.05 and 901.00–901.05 MHz;

Channel 2: 940.05–940.10 and 901.05–901.10 MHz;

Channel 3: 940.10–940.15 and 901.10–901.15 MHz;

Channel 4: 940.15–940.20 and 901.15–901.20 MHz; and,

Channel 5: 940.20–940.25 and 901.20–901.25 MHz.*

(2) Three 50 kHz channels paired with 12.5 kHz channels:

Channel 6: 930.40–930.45 and 901.7500–901.7625 MHz;

Channel 7: 930.45–930.50 and 901.7625–901.7750 MHz; and,

Channel 8: 930.50–930.55 and 901.7750–901.7875 MHz.*

(3) Three 50 kHz unpaired channels:

Channel 9: 940.75–940.80 MHz;

Channel 10: 940.80–940.85 MHz; and,

Channel 11: 940.85–940.90 MHz.*

(b) Six frequencies are available for assignment on a regional basis as follows:

(1) Two 50 kHz channels paired with 50 kHz channels:

Channel 12: 940.25–940.30 and 901.25–901.30 MHz; and,

Channel 13: 940.30–940.35 and 901.30–901.35 MHz.**

(2) Four 50 kHz channels paired with 12.5 kHz channels:

Channel 14: 930.55–930.60 and 901.7875–901.8000 MHz;

Channel 15: 930.60–930.65 and 901.8000–901.8125 MHz;

Channel 16: 930.65–930.70 and 901.8125–901.8250 MHz; and,

Channel 17: 930.70–930.75 and 901.8250–901.8375 MHz.**

(c) Seven frequencies are available for assignment on a MTA basis as follows:

(1) Two 50 kHz channels paired with 50 kHz channels:

Channel 18: 940.35–940.40 and 901.35–901.40 MHz; and,

Channel 19: 940.40–940.45 and 901.40–901.45 MHz.*

(2) Three 50 kHz channels paired with 12.5 kHz channels:

Channel 20: 930.75–930.80 and 901.8375–901.8500 MHz;

Channel 21: 930.80–930.85 and 901.8500–901.8625 MHz; and,

Channel 22: 930.85–930.90 and 901.8625–901.8750 MHz.*

(3) Two 50 kHz unpaired channels:

Channel 23: 940.90–940.95 MHz; and,

Channel 24: 940.95–941.00 MHz.*

(d) Two 50 kHz channels paired with 12.5 kHz channels are available for assignment on a BTA basis:

Channel 25: 930.90–930.95 and 901.8750–901.8875 MHz; and,

Channel 26: 930.95–931.00 and 901.8875–901.9000 MHz.*

Note 1: Operations in markets or portions of markets which border other countries, such as Canada and Mexico, will be subject to on-going coordination arrangements with neighboring countries.

3. Section 24.130 is amended by revising paragraphs (b) and (c) to read as follows:

* * * * *

(b) The following four 12.5 kHz unpaired channels are available for assignment on a MTA basis:

A: 901.9000–901.9125 MHz;

B: 901.9125–901.9250 MHz;

C: 901.9250–901.9375 MHz; and

D: 901.9375–901.9500 MHz.

(c) The following four 12.5 kHz unpaired channels are available for assignment on a BTA basis:

E: 901.9500–901.9625 MHz;

F: 901.9625–901.9750 MHz:

G: 901.9750–901.9875 MHz; and

H: 901.9875–902.0000 MHz.

4. Section 24.303 is revised to read as follows:

Sec. 24.303 Competitive Bidding Mechanisms

(a) *Sequencing.* The Commission will establish and may vary the sequence in which narrowband PCS licenses will be auctioned.

(b) *Grouping.* In the event the Commission uses either a simultaneous multiple round competitive bidding design or combinatorial bidding, the Commission will determine which licenses will be auctioned simultaneously or in combination.

(c) *Reservation Price.* The Commission may establish a reservation price, either disclosed or undisclosed, below which a license subject to auction will not be awarded.

(d) *Minimum Bid Increments.* The Commission may, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms. The Commission may also establish by Public Notice a suggested opening bid or a minimum opening bid on each license.

(e) *Stopping Rules.* The Commission may establish stopping rules before or during multiple round auctions in order to terminate an auction within a reasonable time.

(f) *Activity Rules.* The Commission may establish activity rules which require a minimum amount of bidding activity. In the event that the Commission establishes an activity rule in connection with a simultaneous multiple round auction, each bidder will be entitled to request and will be automatically granted one activity rule waiver during each stage of an auction, or one automatic waiver during a specified number of bidding rounds. The Commission may change by Public Notice the number and frequency of such automatic activity rule waivers for a specific auction.

(g) *Bidder Identification During Auctions.* The Commission may choose, on an auction-by-auction basis, to release the identity of the bidders associated with bidder identification numbers. The Commission will announce by Public Notice before each auction whether bidder identities will be revealed.

5. Section 24.308 is revised to read as follows:

Sec. 24.308 License Grant, Denial, Default, and Disqualification

(a) Unless eligible for installment payments and/or a bidding credit, each winning bidder is required to pay the balance of its winning bid in a lump sum payment within five (5) business days following the award of the license. Grant of the license will be conditioned upon full and timely payment of the winning bid amount.

(b) A bidder who withdraws its bid, defaults on a payment or is disqualified will be subject to the penalties specified in Section 1.2109 of this Chapter.

6. Section 24.309 is revised to read as follows:

Sec. 24.309 Designated Entities

(a) Designated entities entitled to preferences in the narrowband PCS service are small businesses and businesses owned by members of minority groups and/or women as defined in §§ 24.320(b) and 24.320(c) of this Subpart.

(b) Designated entities will be eligible for certain special narrowband PCS provisions as follows:

(1) Installment payments. Small businesses, including small businesses owned by members of minority groups and women, will be eligible to pay the full amount of their winning bid on any regional, MTA or BTA license in installments over the term of the license pursuant to the terms set forth in Section 1.2110(d) of this Chapter.

(2) Bidding Credits. Businesses owned by members of minority groups and women, including small businesses owned by members of minority groups and women, will be eligible for a twenty-five (25) percent bidding credit when bidding on the following licenses: (1) the nationwide licenses on Channel 5, Channel 8 and Channel 11; (2) all MTA licenses on Channel 19, Channel 22, Channel 24; and (3) BTA licenses on Channel 26. This bidding credit will reduce by 25 percent the bid price that businesses owned by members of minority groups and women will be required to pay to obtain a license. Businesses owned by women and/or minorities, including small businesses owned by women and/or minorities will be eligible for a forty (40) percent bidding credit when bidding on all regional licenses on Channel 13 and Channel 17. In section 24.129 above, the licenses that will be eligible for 25 percent bidding credits are indicated by an (*); the licenses that will be eligible for 40 percent bidding credits are indicated by an (**).

(3) Tax Certificates. Any non-controlling initial investor in a business owned by members of minority groups and/or women and who provides "start-up" financing, which allows such business to acquire a narrowband PCS license(s), and any non-controlling investor who purchases an interest in a narrowband PCS license held by a business owned by members of minority groups and/or women within the first year after license issuance, may, upon the sale of such investment or interest, request from the Commission a tax certificate. Any narrowband PCS licensee who assigns or transfers control of its license to a business owned by members of minority groups and/or women may request that the Commission issue the licensee a tax certificate.

(c) *Short-Form Application Certification; Long-Form Application Disclosure.*

(1) All applicants for licenses under the designated entity provisions set forth in this section shall certify on their short-form applications (Form 175) that they are eligible for those preferences pursuant to this section.

(2) In addition to the requirements in subpart I, all designated entity applicants that are winning bidders shall, in an exhibit to their long-form applications—

(i) identify each member of the applicant's control group, regardless of the size of the member's total interest in the applicant, and each member's minority group or gender classification, if applicable;

(ii) disclose the gross revenues of the applicant and its affiliates, and other persons that hold interests in the applicant and their affiliates (including all members of the applicant's control group); and

(iii) certify that the personal net worth of the applicant (if an individual), each affiliate and each person that hold an interest in the applicant is less than $40 million.

(d) *Audits.* Applicants and licensees claiming eligibility under this section shall be subject to random audits by the Commission.

(e) *Definitions.* The terms affiliate, business owned by members of minority groups and women, consortium of small businesses, control group, gross revenues, members of minority groups, passive equity, personal net worth, and small business used in this section are defined in § 24.320.

(f) Unjust Enrichment. Designated entities using installment payments, bidding credits or tax certificates to obtain a narrowband PCS license will be subject to the following unjust enrichment provisions:

(1) If a small business paying for a narrowband PCS license in installment payments seeks to transfer a license to a non-small business entity during the term of the license, the remaining principal balance must be repaid as a condition of the license transfer.

(2) If a licensee that utilizes installment financing under this section seeks to make any change in ownership structure that would result in the licensee losing eligibility for installment payments, the licensee shall first seek Commission approval and must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of the change as a condition of approval. Increases in gross revenues that result from equity investments that are not attributable to the licensee under § 24.320(b)(2)(iv), revenues from operations, business development or expanded service

shall not be considered changes in ownership structure under this paragraph.

7. Section 24.320 is added to read as follows:

§ 24.320 Definitions

(a) *Scope.* The definitions in this section apply to §§ 24.309–24.315 of this subpart, unless otherwise specified in those sections.

(b) *Small Business; Consortium of Small Businesses.*

(1) A small business is an entity that (i) together with its affiliates has average annual gross revenues that are not more than $40 million for the preceding three calendar years; (ii) has no attributable investor or affiliate that has a personal net worth of $40 million or more; (iii) has a control group all of whose members and affiliates are considered in determining whether the entity meets the $40 million annual gross revenues and personal net worth standards; and (iv) such control group holds 50.1 percent of the entity's voting interest, if a corporation, and at least 25 percent of the entity's equity on a fully diluted basis, except that a business owned by members of minority groups and/or women (as defined in subsection (c)) may also qualify as a small business if a control group that is 100 percent composed of members of minority groups and/or women holds 50.1 percent of the entity's voting interests, if a corporation, and 50.1 percent of the entity's total equity on a fully diluted basis and no single other investor holds more than 49.9 percent of passive equity in the entity.

(2) *Attribution and Aggregation of Gross Revenues and Personal Net Worth.*

(i) Except as specified in paragraphs (iii) and (iv), the gross revenues of the applicant (or licensee) and its affiliates, and other persons that hold interests in the applicant (or licensee) and the affiliates shall be considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is a small business.

(ii) The personal net worth of individual applicants (or licensees) and other persons that hold interests in the applicant (or licensee), and their affiliates, if less than $40 million, shall not be considered for purposes of determining whether the applicant (or licensee) is eligible to bid as a small business.

(iii) Where an applicant (or licensee) is a consortium of small businesses, the gross revenues of each small business shall not be aggregated.

(iv) (a) The gross revenues and personal net worth of a person that holds an interest in the applicant (or licensee) shall not be considered so long as (1) such person holds no more than 25 percent of the applicant's (or licensee's) passive equity and is not a member of the applicant's or control group and (2) the applicant has a control group that owns at least 25 percent of the applicant's total equity and, if a corporation, holds at least 50.1 percent of the applicant's voting interests.

(b) The gross revenues, total assets and personal net worth of a person that holds an interest in the applicant shall not be considered so long as (1) such person holds no more than 49.9 percent of the applicant's (or licensee's) passive equity and is not a member of the applicant's control group; and (2) the applicant has a control group that consists entirely of members of minority groups and/or women and that owns at least 50.1 percent of the applicant's total equity and, if a corporation, at least 50.1 percent of the applicant's voting interests.

Note: Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised, except that the such agreements may not be used to appear to terminate or divest ownership interests before they actually do so.

(3) A small business consortium is a conglomerate organization formed as a joint venture between mutually-independent business firms, each of which individually satisfies the definition of a small business.

(c) *Business Owned by Members of Minority Groups and/or Women.* A business owned by members of minority groups and/or women is an entity (i) that has a control group composed 100 percent of members of minority groups and/or women who are United States Citizens, and (ii) such control group owns and holds 50.1 percent of the voting interests, if a corporation, and (A) owns and holds 50.1 percent of the total equity in the entity, provided that all other investors hold passive interests; or (B) holds 25 percent of the total equity in the entity, provided that no single other investor holds more than 25 percent passive equity interests in the entity. In a partnership, all general partners must be members of minority groups and/or women. Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised, except that such agreements may not be used to appear to terminate or divest ownership interests before they actually do so.

(d) *Gross Revenues.* Gross revenues shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (*e.g.*, cost of goods sold), as evidenced by audited quarterly financial statements for the relevant period.

(e) *Personal Net Worth.* Personal net worth shall mean the market value of all assets (real and personal, tangible and intangible) owned by an individual, less all liabilities (including personal guarantees) owed by the individual in his individual capacity or as a joint obligor.

(f) *Members of Minority Groups.* Members of minority groups includes individuals of African American, Hispanic-surnamed, American Eskimo, Aleut, American Indian and Asian American extraction.

(g) *Passive Equity.* Passive equity shall mean (i) for corporations, non-voting stock or stock that includes no more than fifteen percent of the voting equity; (ii) for partnerships, joint ventures and other non-corporate entities, limited partnership interests and similar interests that do not afford the power to exercise control of the entity.

(h) *Control Group.* A control group is an entity, or a group of individuals or entities, that possesses *de jure* control and *de facto* control of an applicant or licensee, and as to which the applicant's or licensee's charters, articles of incorporation, bylaws, agreements and any other relevant documents (and amendments thereto) provide (i) that the entity and/or its members own unconditionally at least 50.1 percent of the total voting interests of a corporation; (ii) that the entity and/or its members receive at least 50.1 percent of the annual distribution of any dividends paid on the voting stock of a corporation; (iii) that, in the event of dissolution or liquidation of a corporation, the entity and/or its members are entitled to receive 100 percent of the value of each share of stock in its possession and a percentage of the retained earnings of the concern that is equivalent to the amount of equity held in the corporation; and (iv) that the entity and/or its members have the right to receive dividends, profits and regular and liquidating distributions from the business in proportion to its interest in the total equity of the applicant or licensee.

Note: Voting control does not always assure *de facto* control, such as, for example, when the voting stock of the control group is widely dispersed (*see, e.g.*, § 24.720(e)(2)(iii)).

(i) *Affiliate.* (1) Determinations regarding whether an individual or entity will be considered an affiliate of (a) an applicant or (b) a person holding an attributable interest in an applicant under paragraph (b)(2) will be made pursuant to the general affiliation rules set forth in section 24.720(l) of this part.

8. Section 24.406 is revised to read as follows:

Sec. 24.406 Filing of Narrowband PCS Applications, Fees, and Numbers of Copies

(a) As prescribed by Sections 24.305, 24.307, and 24.409 of this part, standard formal application forms applicable to the narrowband PCS may be obtained from either:

(1) Federal Communications Commission, Washington, DC 20554; or

(2) by calling the Commission's Forms Distribution Center, (202) 418–3676.

(b) Applications for the initial provision of narrowband PCS service must be filed on FCC Form 175 in accordance with the rules in Section 24.305 and Part 1, Subpart Q. In the event of mutual exclusivity between applicants filing FCC Form 175, only auction winners will be eligible to file subsequent long form applications on FCC Form 401 for initial narrowband PCS licenses. Mututally exclusive applications filed on Form 175 are subject to competitive bidding under those rules. Narrowband PCS applicants filing Form 401 need not complete Schedule B.

(c) All applicants for Narrowband PCS radio station authorizations (other than applications for initial provision of narrowband PCS service filed on FCC Form 175) shall be submitted for filing to: Federal Communications Commission, Washington, DC 20554, Attention: Narrowband PCS Processing Section. Applicants requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with Sec. 0.401(b).

(d) All correspondence or amendments concerning a submitted application shall clearly identify the name of the applicant, applicant identification number or Commission file number (if known) or station call sign of the application involved, and may be sent directly to the Common Carrier Bureau, Narrowband PCS Processing Section.

(e) Except as otherwise specified, all applicants, amendments, correspondence, pleadings and forms (including FCC Form 175) shall be submitted on one original paper copy and with three microfiche copies, including exhibits and attachments thereto, and shall be signed as prescribed by Sec. 1.743. Unless otherwise provided by the FCC, filings of five pages or less are exempt from the requirements to submit on microfiche, as well as emergency filings like letters requesting special temporary authority. Those filing any amendments, correspondence, pleadings, and forms must simultaneously submit the original hard copy which must be stamped "original". In addition to the original hard copy, those filings pleadings, including pleadings under Section 1.2108 of the rules shall also submit 2 paper copies as provided in Sec. 1.51 of the rules.

(1) Microfiche copies. Each microfiche copy must be a copy of the signed original. Each microfiche copy shall be a 148mm X 105mm negative (clear transparent characters appearing on an opaque background) at 24X to 27X reduction for microfiche or microfiche jackets. One of the microfiche sets must be a silver halide camera master or a copy made on silver halide film such as Kodak Direct Duplicatory Film. The microfiche must be placed in paper microfiche envelopes and submitted in a B6 (125 mm x 176 mm) or 5 x 7.5 inch envelope. All applicants must leave Row "A" (the first row for page images) of the first fiche blank for in-house identification purposes.

(2) All applicants and all amendments must have the following information printed on the mailing envelope, the microfiche envelope, and on the title area at the top of the microfiche:

(i) The name of the applicant;

(ii) The type of application (e.g. nationwide, regional, MTA, BTA, response channel);

(iii) The month and year of the document;

(iv) Name of the document;

(v) File number, applicant identification number, and call sign, if assigned; and

(vi) The identification number and date of the Public Notice announcing the auction in response to which the application was filed (if applicable).

Each microfiche copy of pleadings shall include:

(A) The month and year of the document;

(B) Name of the document;

(C) Name of the filing party;

(D) File number, applicant identification number, and call sign, if assigned;

(E) The identification number and date of the Public Notice announcing the auction in response to which the application was filed (if applicable). Abbreviations may be used if they are easily understood.

9. Section 24.422 is revised to read as follows:

Sec. 24.422 Amendment of Application for Narrowband Personal Communications Service Filed on FCC Form 175

(a) The Commission will provide bidders a limited opportunity to cure defects in FCC Form 175 specified herein except for failure to sign the application and to make certifications. These are defects which may not be cured. See also Section 1.2105.

(b) In the Narrowband PCS, applicants will be permitted to amend their Form 175 applications to make minor amendments to correct minor errors or defects such as typographical errors. Applicants will also be permitted to amend FCC Form 175 to make ownership changes or changes in the identification of parties to bidding consortia, provided such changes do not result in a change in control of the applicant and do not involve another applicant (or parties in interest to an applicant) who has applied for any of the same licenses as the applicant. Amendments which change control of the applicant will be considered major amendments. An FCC Form 175 which is amended by a major amendment will be considered to be newly filed and cannot be resubmitted after applicable filing deadlines. See also Section 1.2105.

10. Section 24.429 is amended by deleting paragraph (b) and redesignating paragraphs (c) and (d) as (b) and (c), respectively, to read as follows:

Sec. 24.429 Ownership Changes and Agreements To Amend or To Dismiss Applications or Pleadings

(a) Applicability. Subject to the provisions of Sec. 1.2105 (Bidding Application and Certification Procedures; Prohibition of Collusion), this section applies to applicants and all other parties interested in pending applications who wish to resolve contested matters among themselves with a formal or an informal agreement or understanding. This section applies only when the agreement or understanding will result in:

(1) A major change in the ownership of an applicant to which Sec. 24.423(c) and 24.423(g) would apply or which would cause the applicant to lose its status as a designated entity under Section 24.309, or

(2) The individual or mutual withdrawal, amendment or dismissal of any pending application, amendment, petitioner or other pleading.

(b) If the amendment would cause the applicant to lose its status as a designated entity under Section 24.309, the applicant must notify the Commission of this change in status and must comply with the obligations imposed by Sections 24.308, including increasing its down payment to the level required as a non-designated entity.

(c) The provisions of Section 22.927 will apply in the event of the individual or mutual withdrawal, amendment or dismissal of any pending application, amendment, petitioner or other pleading.

11. Section 24.430 is revised to read as follows:

Sec. 24.430 Opposition to Applications

(a) Petitions to deny (including petitions for other forms of relief) and responsive pleadings for Commission consideration must comply with Section 1.2108 and must:

(1) Identify the application or applications (including applicant's name, station location, Commission file numbers and radio service involved) with which it is concerned;

(2) Be filed in accordance with the pleading limitations, filing periods, and other applicable provisions of Secs. 1.41 through 1.52 except where otherwise provided in Section 1.2108;

(3) Contain specific allegations of fact which, except for facts of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof, and which shall be sufficient to demonstrate that the petitioner (or respondent) is a party in interest and that a grant of, or other Commission action regarding, the application would be prima facie inconsistent with the public interest;

(4) Be filed within thirty (30) days after the date of public notice announcing the acceptance for filing of any such application or major amendment thereto (unless the Commission otherwise extends the filing deadline); and

(5) Contain a certificate of service showing that it has been mailed to the applicant no later than the date of filing thereof with the Commission.

(b) A petition to deny a major amendment to a previously filed application may only raise matters directly related to the amendment which could not have been raised in connection with the underlying, previously filed application. This does not apply to petitioners who gain standing because of the major amendment.

(c) parties who file frivolous petitions to deny may be subject to sanctions including monetary forfeitures, license revocation, if they are FCC licensees, and may be prohibited from participating in future auctions.

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7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[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.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1994. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1993. The CFR volume issued January 1, 1993, should be retained.



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