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Monday
August 23, 1999

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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

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98–083–5]

Mediterranean Fruit Fly; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by removing the quarantined area in Riverside and Orange Counties, CA, from the list of quarantined areas. The quarantine was necessary to prevent the spread of the Mediterranean fruit fly to noninfested areas of the United States. We have determined that the Mediterranean fruit fly has been eradicated from this area and that restrictions on the interstate movement of regulated articles from this area are no longer necessary. This action relieves unnecessary restrictions on the interstate movement of regulated articles from this area.

DATES: This interim rule is effective as of August 16, 1999. We invite you to comment on this docket. We will consider all comments that we receive by October 22, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–083–5, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 98–083–5.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The Mediterranean fruit fly regulations (contained in 7 CFR 301.78 through 301.78–10 and referred to below as the regulations) restrict the movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States. Since an initial finding of Medfly in a portion of San Diego County, CA, in August 1998, the quarantined areas in California have included portions or Orange, Riverside, and San Diego Counties.

In an interim rule effective August 13, 1998, and published in the **Federal Register** on August 20, 1998 (63 FR 44539–44541, Docket No. 98–083–1), we added a portion of San Diego County, CA, to the list of quarantined areas. In a second interim rule effective August 14, 1998, and published in the **Federal Register** on August 21, 1998 (63 FR 44774–44776, Docket No. 98–083–2), we added a portion of Orange County, CA, to the list of quarantined areas. In a third interim rule effective November 24, 1998, and published in the **Federal Register** on December 1, 1998 (63 FR 65999–66001, Docket No. 98–083–3), we added an area in Riverside and Orange Counties, CA, to the list of quarantined areas. In a fourth interim rule effective June 1, 1999, and published in the **Federal Register** on June 7, 1999 (64 FR 30213–30214, Docket No. 98–083–4), we removed a portion of San Diego County, CA, from the list of quarantined areas.

We have determined, based on trapping surveys conducted by the Animal and Plant Health Inspection Service (APHIS) and California State and county inspectors, that the Medfly has been eradicated from the quarantined area in Riverside and Orange Counties, CA. The last finding of Medfly thought to be associated with the infestation in that portion of Riverside and Orange Counties, CA, was November 16, 1998. Since that time, no evidence of infestation has been found in this area. We are, therefore, removing that portion of Riverside and Orange Counties, CA, quarantined because of the Medfly from the list of areas in § 301.78–3(c). Portions of Orange County remain quarantined.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. The portion of Riverside and Orange Counties, CA, affected by this document was quarantined to prevent the Medfly from spreading to noninfested areas of the United States. Because the Medfly has been eradicated from this area, and because the continued quarantined status of that portion of Riverside and Orange Counties, CA, would impose unnecessary regulatory restrictions on the public, immediate action is warranted to relieve restrictions.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any

amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule amends the Medfly regulations by removing a portion of Riverside and Orange Counties, CA, from quarantine for Medfly. This action affects the interstate movement of regulated articles from this area. We estimate that there are 75 entities in the quarantined area of Riverside and Orange Counties, CA, that sell, process, handle, or move regulated articles; this estimate includes 26 fruit sellers, 16 nurseries, 26 growers, 4 packing houses, 2 certified farmer's markets, and 1 swapmeet. The number of these entities that meet the U.S. Small Business Administration's (SBA) definition of a small entity is unknown, since the information needed to make that determined (i.e., each entity's gross receipts or number of employees) is not currently available. However, it is reasonable to assume that most of the 75 entities are small in size, since the overwhelming majority of businesses in California, as well as the rest of the United States, are small entities by SBA standards.

The effect of this action on small entities should be minimally positive, as they will no longer be required to treat articles to be moved interstate for Medfly.

Therefore, termination of the quarantine of that portion of Riverside and Orange Counties, CA, should have a minimal economic effect on the small entities operating in this area. We anticipate that the economic impact of lifting the quarantine, though positive, will be no more significant than was the minimal impact of its imposition.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

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

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.78–3, paragraph (c), the entry for California is amended by removing the entry for Riverside and Orange Counties.

Done in Washington, DC, this 16th day of August 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–21753 Filed 8–20–99; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 98–110–1]

RIN 0579–AB11

Importation of Gypsy Moth Host Material From Canada

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are establishing regulations for the importation into the United States of gypsy moth host materials from Canada due to infestations of gypsy moth in the Provinces of British Columbia, New Brunswick, Nova Scotia, Ontario, and Quebec. These regulations require trees without roots (e.g., Christmas trees), trees with roots, shrubs with roots and persistent woody stems, logs and pulpwood with bark attached, outdoor household articles, and mobile homes and their associated equipment to meet specified certification or destination requirements if they are intended to be moved into or through areas of the United States that are not infested with gypsy moth. This action is necessary on an emergency basis to prevent the introduction of gypsy moth into noninfested areas of the United States.

DATES: Interim rule effective August 23, 1999. Consideration will be given only to comments received on or before October 22, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–110–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–110–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Ms. Coanne O'Hern, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: Coanne.E.O'Hern@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The gypsy moth, *Lymantria dispar* (Linnaeus), is a destructive pest of forest and shade trees. The Animal and Plant Health Inspection Service (APHIS) has regulated the interstate movement of gypsy moth host materials from areas of the United States that are generally infested with gypsy moth through its domestic quarantine notices (see 7 CFR 301.45 through 301.45–12), but had not, until now, established specific regulations in our foreign quarantine notices regarding the importation into the United States of gypsy moth host materials from foreign countries.

In each of the last 4 years, Vancouver Island in the Canadian Province of British Columbia has experienced an increase in the number of gypsy moths

trapped. In 1998, the Environmental Appeals Board of British Columbia prevented the Canadian Food Inspection Agency (CFIA) from conducting its aerial spraying program to eradicate gypsy moth. That aerial spraying program was replaced by ground treatments limited to certain areas. However, the results of the CFIA's 1998 gypsy moth trapping survey show that the ground treatments were not effective in eradicating gypsy moth from Vancouver Island. We believe that it is necessary to establish regulations regarding the importation of gypsy moth host materials from Canada because the established populations of gypsy moth on Vancouver Island pose a risk of introducing gypsy moth into the noninfested areas of the western United States.

Further, gypsy moth has been established for many years in certain areas of the Canadian Provinces of New Brunswick, Nova Scotia, Ontario, and Quebec. Until this time, however, we have not established specific regulations in our foreign quarantine notices regarding the importation of gypsy moth host materials from those provinces. Rather, we have used our authority under the emergency provisions of the Federal Plant Pest Act (7 U.S.C. 150dd) as the basis for the actions we have taken to prevent the introduction of gypsy moth from those areas into noninfested areas of the United States. The import conditions to which gypsy moth host materials from these infested areas have been subjected are the same as the importation requirements we believe are necessary for gypsy moth host materials from infested areas of Vancouver Island, British Columbia. This interim rule addresses the importation of gypsy moth host materials from the infested areas of Ontario, New Brunswick, Nova Scotia, and Quebec, as well as Vancouver Island.

Therefore, we are establishing a new ''Subpart—Gypsy Moth Host Material from Canada'' (§§ 319.77–1 through 319.77–5), which is described below, in our foreign quarantine notices in 7 CFR part 319 to provide regulations for the importation of gypsy moth host materials from Canada.

Definitions

In § 319.77–1, we define the terms used in the subpart. Five of the terms defined—*Animal and Plant Health Inspection Service (APHIS), gypsy moth, mobile home, outdoor household articles,* and *recreational vehicles*—are also defined in our domestic gypsy moth regulations and are used for the same purposes in the new subpart. Three other terms—*import (imported, importation), phytosanitary certificate,* and *United States*—are not applicable to the domestic gypsy moth regulations and have, therefore, been drawn from other foreign quarantine regulations in part 319.

We are defining *certificate of origin* as: ''A document issued by an official authorized by the national government of Canada that states the area in which a regulated article was produced or grown and includes any other required additional declarations.'' This type of document is already issued in Canada for the movement of gypsy moth host materials (i.e., regulated articles) between infested and noninfested areas, and will, as explained below, be required for regulated articles being imported into the United States when those articles will be moved into or through noninfested areas of the United States.

Finally, we are defining four terms that are used in § 319.77–4, ''Conditions for the importation of regulated articles,'' to make the requirements of that section clearer and thus easier to read and follow. The requirements in § 319.77–4 for importing regulated articles from Canada will differ based on whether the regulated articles originated in an infested or noninfested area of Canada and whether the regulated articles are being moved into or through an infested or noninfested area of the United States. To preclude the need for repeated references to, for example, ''an area of the United States known to be infested with gypsy moth, as listed in § 301.45–3 of this chapter,'' we use the term ''U.S. infested area'' to simplify the reference. The other terms serve a similar purpose. Specifically, these four definitions are:

- *Canadian noninfested area.* Any area of Canada that is not listed as a gypsy moth infested area in § 319.77–3 of this subpart.
- *Canadian infested area.* Any area of Canada listed as a gypsy moth infested area in § 319.77–3 of this subpart.
- *U.S. noninfested area.* Any area of the United States that is not listed as a gypsy moth generally infested area in § 301.45–3 of this chapter.
- *U.S. infested area.* Any area of the United States listed as a gypsy moth generally infested area in § 301.45–3 of this chapter.

Regulated Articles

Section 319.77–2 lists the gypsy moth host materials that are designated as regulated articles in order to prevent the spread of gypsy moth from Canada into noninfested areas of the United States. Those regulated articles may be imported into the United States from Canada only under the conditions described in § 319.77–4, ''Conditions for the importation of regulated articles.''

The regulated articles listed in § 319.77–2, with one exception, are the same as the ones listed in the domestic gypsy moth regulations. The regulated articles under our domestic gypsy moth regulations are: Trees without roots (e.g., Christmas trees), unless greenhouse-grown throughout the year; trees with roots, unless greenhouse-grown throughout the year; shrubs with roots and persistent woody stems, unless greenhouse-grown throughout the year; logs; pulpwood; wood chips; outdoor household articles; mobile homes and their associated equipment; and other articles determined to present a high risk of spreading gypsy moth. The exception to this list that appears in § 319.77–2 is a specification that logs and pulpwood must have bark attached to be considered regulated articles. We added the specification ''with bark attached'' because gypsy moths lay their eggs on the bark of trees. Therefore, we believe that removal of the bark from logs and pulpwood greatly reduces the risk of introducing gypsy moth. In the near future, we intend to propose a similar exception for logs and pulpwood without bark for the domestic gypsy moth regulations.

These regulated articles have been identified as presenting a risk of introducing gypsy moth into noninfested areas when they are moved from infested areas without inspection or treatment.

Gypsy Moth Infested Areas in Canada

Section 319.77–3 lists those areas of Canada known to be infested with gypsy moth. The descriptions of those infested areas, which are in the Provinces of British Columbia, New Brunswick, Nova Scotia, Ontario, and Quebec, were provided to APHIS by CFIA and are set out fully in § 319.77–3 in the rule portion of this document.

Conditions for the Importation of Regulated Articles

Section 319.77–4 sets out the conditions for the importation of regulated articles into the United States from Canada. These conditions focus on regulated articles from Canada that are destined for a noninfested area of the United States or that will be moved through a noninfested area of the United States en route to their destination. When the articles are from a Canadian infested area, we require that they be thoroughly inspected and found free of gypsy moth or treated for gypsy moth, and that the action taken be

documented on a Canadian phytosanitary certificate. Inspection or treatment is also required under our domestic gypsy moth regulations; both have proven to be effective methods of preventing the spread of gypsy moth. When the articles are from a Canadian noninfested area, we require that they be accompanied by a Canadian certificate of origin to confirm that they did not originate in a gypsy moth infested area. As noted previously, this type of document is already issued in Canada for the movement of gypsy moth host material between infested and noninfested areas in that country. When certain regulated articles have been greenhouse-grown throughout the year or when regulated articles are destined for an area of the United States that is infested with gypsy moth and will not be moved through any noninfested areas, then the articles may be imported into the United States without restriction under this subpart. (We will be able to determine whether an article has been greenhouse-grown because greenhouse-grown products from Canada are subject to the labeling requirements in 7 CFR 319.37–4(c).) The requirements described in this paragraph are discussed below in more detail.

Trees and Shrubs

Paragraph (a) of § 319.77–4 addresses the importation of trees without roots (e.g., Christmas trees), trees with roots, and shrubs with roots and persistent woody stems. Trees or shrubs that have been greenhouse-grown throughout the year, and thus protected from gypsy moth infestation, or that are destined for a U.S. infested area and will not be moved through any U.S. noninfested areas, may be imported from any area in Canada without restriction under the subpart.

Trees or shrubs originating in a Canadian infested area that are to be moved into or through a U.S. noninfested area may be imported if they are accompanied by an officially endorsed Canadian phytosanitary certificate. The phytosanitary certificate must include an additional declaration confirming that the trees or shrubs have been inspected and found free of gypsy moth or that they have been treated for gypsy moth.

Trees or shrubs originating in a Canadian noninfested area that are to be moved into or through a U.S. noninfested area may be imported if they are accompanied by a certificate of origin stating that they were produced in an area of Canada where gypsy moth is not known to occur.

Finally, because trees and shrubs from Canada that are capable of propagation may also be subject to restrictions under our regulations in ''Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products'' (7 CFR 319.37 through 319.37–14), § 319.77–4(a) includes a footnote informing the reader of those other requirements.

Logs and Pulpwood

Paragraph (b) of § 319.77–4 addresses logs and pulpwood with bark attached. Logs and pulpwood that are destined for a U.S. infested area and will not be moved through any U.S. noninfested areas may be imported from any area in Canada without restriction under the subpart.

Logs or pulpwood originating in a Canadian infested area that are to be moved into or through a U.S. noninfested area must meet one of two requirements for importation: (1) They must be accompanied by an officially endorsed Canadian phytosanitary certificate that includes an additional declaration confirming that they have been inspected and found free of, or treated for, gypsy moth; or (2) they must be moved to a specified U.S. processing plant or mill under compliance agreement with APHIS for specified handling or processing that will mitigate the risk of gypsy moth.

Logs or pulpwood originating in a Canadian noninfested area that are to be moved into or through a U.S. noninfested area must be accompanied by a certificate of origin stating that they were produced in an area of Canada where gypsy moth is not known to occur.

Finally, because logs from Canada are also subject to restrictions under our regulations in ''Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles'' (7 CFR 319.40 through 319.40–11), § 319.77–4(b) includes a footnote informing the reader of those other requirements.

Outdoor Household Articles and Mobile Homes

Paragraph (c) of § 319.77–4 addresses the importation of outdoor household articles and mobile homes and their associated equipment. Those regulated articles may be imported without restriction under the subpart if they are being moved from a Canadian noninfested area. They may also be imported without restriction under the subpart if they are being moved from a Canadian infested area, are destined for a U.S. infested area, and will not be moved through any U.S. noninfested areas.

Outdoor household articles and mobile homes and their associated equipment that are being moved from a Canadian infested area into or through a U.S. noninfested area must be accompanied by a statement, signed by their owner, that they have been inspected by the owner and found free of gypsy moth. This signed statement will act as a signal to U.S. authorities at the United States/Canada border that the owner is aware of the requirements, has inspected the outdoor household articles or mobile home and its associated equipment, and has not found gypsy moth. U.S. authorities at the border will collect these signed statements. However, if the item being imported is determined to be high risk (e.g., an older mobile home that has been sitting in one place for a number of years), then the outdoor household articles or mobile home and its associated equipment may be re-inspected by U.S. authorities at the border. Requiring pre-inspection by the owner should minimize cases where such outdoor household articles or mobile homes and their associated equipment brought to the border are not allowed entry into the United States because of the presence of gypsy moth. The domestic gypsy moth regulations do not provide for owner inspection of mobile homes; however, this rule does allow for owner inspection of mobile homes entering the United States from Canada. The questions asked at the border, along with the provision for secondary inspections at the border, are added safeguards used to complement the self-inspection.

Disposition of Regulated Articles Denied Entry

Under § 319.77–5, any article that is refused importation for noncompliance with the regulations must be promptly safeguarded or removed from the United States to prevent the article from introducing gypsy moth into noninfested areas of the United States. This section explains that when such articles are not promptly safeguarded or removed from the United States, they may be seized, destroyed, or otherwise disposed of by APHIS as authorized by section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd and 150ff).

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is

necessary because of gypsy moth outbreaks in western Canada. Further, gypsy moths will soon start depositing their egg masses on articles routinely moved into the United States. Thus, there is an increased possibility that the gypsy moth could be introduced into noninfested areas of the United States, where it could cause economic losses due to defoliation of susceptible forest and shade trees. Although we could use our authority under the Federal Plant Pest Act to impose import conditions at the U.S./Canadian border for regulated articles from western Canada as we have been doing for such articles from eastern Canada, we believe that promulgating regulations at this time will provide a much more effective means of preventing the introduction of gypsy moth into noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have prepared an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this interim rule on small entities. The discussion also serves as our cost-benefit analysis under Executive Order 12866. Based on the information we have, there is no basis to conclude that this rule will result in any significant economic impact on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the economic impacts of this rule on small entities. Therefore, we are inviting comments on potential economic impacts. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this rule.

Under the Federal Plant Pest Act (7 U.S.C. 150aa–150jj) and the Plant Quarantine Act (7 U.S.C. 151–165 and 167), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of injurious plant pests.

This rule establishes regulations for the importation into the United States of gypsy moth host materials from Canada due to infestations of gypsy moth in the Provinces of British Columbia, New Brunswick, Nova Scotia, Ontario, and Quebec. These regulations require regulated articles—trees without roots (e.g., Christmas trees), trees with roots, shrubs with roots and persistent woody stems, logs and pulpwood with bark attached, outdoor household articles, and mobile homes and their associated equipment—to meet certain certification or destination requirements if they are to be moved from Canada into or through areas of the United States that are not infested with gypsy moth.

The United States engages in a great deal of trade in live trees, live plants, and rough wood. In 1998, the United States imported approximately $231 million worth of the type of nursery products covered by this rule and exported approximately $160 million worth of those products. In that same year, U.S. imports of rough wood, including logs, pulpwood, and wood chips, were worth approximately $141 million, while exports were worth approximately $1.8 billion.

Canada is the major source for U.S. imports of live trees, live plants, and rough wood covered by this rule. In 1998, Canada accounted for more than 80 percent of U.S. imports of these live trees and plants and for nearly 90 percent of U.S. imports of this rough wood. The Canadian provinces affected by this rule change account for the vast majority of Canadian exports of live trees, live plants, and rough wood to the United States, as shown in the table below. All figures in the table are rounded to the first decimal place. Therefore, ''0.0'' represents imports valued at $50,000 or less. Also, for certain commodities, slight discrepancies exist between the sum of the individual province columns and the ''Total for Canada'' column because of differences in the data published by Statistics Canada and the U.S. Department of Commerce. It is also important to note that these values represent imports from each province, whereas the infested areas are smaller areas contained within the provinces. Thus, the values listed are conservatively high estimates provided to put into perspective the volume of potential host materials moving across the border.

1998 U.S. IMPORTS OF LIVE TREES, LIVE PLANTS, AND ROUGH WOOD
[in millions of U.S. dollars]

Export good	Canadian provinces with invested areas					Canadian noninfested areas							Total U.S. imports	
	British Columbia	New Brunswick	Nova Scotia	Ontario	Quebec	Alberta	Mantioba	Newfoundland	North-West Territories	Prince Edward island	Saskatchewan	Yukon	Total for Canada	Total for World
60220	0.3	.....	2.3	7.1	1.7	0.0	.....	.....	.....	0.3	.....	.....	11.5	12.2
60230	0.2	0.0	.....	2.2	.....	.....	.....	.....	.....	.....	.....	.....	2.4	2.4
60290	22.5	10.4	0.8	97.4	4.7	0.2	0.4	.....	.....	0.3	0.0	.....	132.9	162.2
60491	2.5	14.0	7.6	1.4	16.6	0.8	.....	0.0	.....	0.0	0.0	.....	40.6	54.6
440110	1.4	.....	.....	1.9	0.3	0.0	.....	.....	.....	.....	.....	.....	3.5	3.9
440121	20.6	0.0	.....	0.8	0.4	.....	0.0	.....	.....	.....	.....	.....	21.8	24.2
440122	3.0	.....	.....	2.0	0.1	.....	.....	.....	.....	.....	.....	.....	5.0	5.5
440320	44.7	8.9	1.7	5.6	1.6	5.5	0.0	.....	0.1	0.1	0.6	.....	66.8	73.9
440341	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.0
440349	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.6
440391	.....	0.0	.....	0.7	0.0	.....	.....	.....	.....	.....	.....	.....	0.7	1.6
440392	.....	.....	.....	0.0	.....	.....	.....	.....	.....	.....	.....	.....	0.0	0.2
440399	1.0	3.2	0.7	23.3	1.6	0.0	0.4	.....	.....	.....	0.1	.....	29.0	31.0

Notes: The six digit numbers in the ''Export Good'' column denote the harmonized system for classifying commodities in trade. These digits represent classes of live trees, live plants, and rough wood. The commodities included under each number are as follows:
60220, edible fruit or nut trees, shrubs, and bushes
60230, rhododendrons and azaleas, grafted or not
60290, live plants, cuttings, and slips that are not elsewhere specified

60491, foliage, branches, etc., and Christmas trees
440110, fuel wood (in logs, billets, twigs, etc.)
440121, wood in chips or particles, coniferous
440122, wood in chips, or particles, nonconiferous
440320, coniferous wood in the rough, not treated
440341, light/dark meranti and meranti bakau in the rough
440349, other tropical wood in the rough, with or without bark (or roughly squared) and not treated
440391, oak wood in the rough, not treated
440392, beech wood in the rough, not treated
440399, nonconiferous wood in the rough, not treated, that is not elsewhere specified
The symbol ''— —'' means that no imports occurred.

Given the destructive potential of gypsy moth, as well as the vast forest resources in the United States, it is likely that the further spread of that pest in the United States as a result of the unrestricted movement of gypsy moth host material from infested areas in Canada would have a negative impact on the noninfested areas of the United States. The impacts that are likely as gypsy moth spreads into new areas include growth loss in timber; fewer visitors and loss of revenues in recreation areas; costs of increased Federal, State, and local government control activities against gypsy moth; and costs to landowners.

Over the last 5 years, APHIS alone has spent more than $30 million on gypsy moth control, eradication, regulatory, and survey activities. In fiscal year 1998, State and local government agencies in Oregon, Utah, and Washington, which are noninfested States, spent more than $1 million to eradicate gypsy moth infestations to prevent this pest from becoming established in those States.

Entities Affected

As a result of this rule, trees without roots (e.g., Christmas trees), trees with roots, and shrubs with roots and persistent woody stems (unless greenhouse-grown throughout the year) that are being moved from a Canadian infested area into or through a U.S. noninfested area will have to be accompanied by a Canadian phytosanitary certificate that includes an additional declaration confirming that the trees or shrubs have been inspected and found free of gypsy moth or treated in accordance with the regulations. If the trees or shrubs are being moved from a Canadian noninfested area into or through a U.S. noninfested area, they must be accompanied by a Canadian certificate of origin stating where the trees were produced in Canada. The rule also requires that logs and pulpwood with bark attached that are being moved from a Canadian infested area into or through a U.S. noninfested area must be: (1) Accompanied by a Canadian phytosanitary certificate that includes an additional declaration confirming that the logs and pulpwood have been inspected and found free of gypsy moth or have been treated, or (2) destined for a specified U.S. processing plant or mill that is under a compliance agreement with APHIS for specified handling or processing.

Therefore, this rule will affect entities engaged in the international movement of regulated articles from Canada into the United States. The restrictions will primarily affect those entities that move trees without roots (e.g., Christmas trees), trees with roots, shrubs with roots and persistent woody stems, logs and pulpwood with bark attached, outdoor household articles, and mobile homes and their associated equipment from Canadian infested areas into or through U.S. noninfested areas. However, because of this rule's certificate of origin requirement, entities moving regulated articles into or through U.S. noninfested areas from noninfested areas of Canada will also be affected to a limited extent.

This rule will require the issuance of some new phytosanitary certificates, but we expect that it will be a relatively small number. This is because all trees with roots and shrubs with roots and persistent woody stems imported from Canada into the United States are already required to obtain a Canadian phytosanitary certificate under the regulations at 7 CFR 319.37. This rule would simply require an additional declaration to that certificate, not a new certificate, for those products moving from a Canadian infested area to a U.S. noninfested area. Likewise, trees without roots (e.g., Christmas trees), logs with bark attached, and pulpwood with bark attached that are imported from Canadian infested areas would not need a phytosanitary certificate if they are either: (1) imported from a Canadian noninfested area to a U.S. noninfested area; (2) imported from a Canadian noninfested area to a U.S. infested area; (3) imported from a Canadian infested area to a U.S. infested area; or (4) imported from any area of Canada to a specified U.S. processing plant or mill under compliance agreement with APHIS for specified handling or processing. The only commodities that would need a new Canadian phytosanitary certificate under the provisions of this rule are trees without roots, logs with bark attached, and pulpwood with bark attached from a Canadian infested area to a U.S. noninfested area that are not destined for a specified U.S. processing plant or mill under compliance agreement with APHIS for specified handling or processing.

This rule will also require the issuance of certificates of origin. The certificate of origin is a new requirement for regulated articles moving from Canadian noninfested areas to U.S. noninfested areas. The certificate of origin will state where the articles were produced.

The information we have concerning the costs of Canadian phytosanitary certificates is for greenhouse products. Canadian phytosanitary certificates for greenhouse products require processing time, in addition to an inspection cost of $15 to $30, and a $5 fee per shipment (shown in Canadian dollars; these amounts are equivalent to $10, $20, and $3.26, respectively, in U.S. dollars). We expect phytosanitary certificates issued for the products affected by this rule to have similar costs and certificates of origin to cost less. We estimate that, as a result of this rule, 100 shipments per year will require Canadian phytosanitary certificates, and 100 shipments per year will require certificates of origin. That would result in total inspection costs averaging approximately $2,326 (U.S. dollars) per year for phytosanitary certificates, and, as stated above, certificates of origin would likely cost less than that amount. Therefore, we expect that a total of less than $4,650 (U.S. dollars) would be spent in inspection costs as a result of obtaining new Canadian phytosanitary certificates and certificates of origin for the products affected by this rule. However, we do not have information on the number and size of entities in Canada and the United States that will be affected by this rule.

This rule also requires individual and commercial movers of outdoor household articles, including recreational vehicles, and mobile homes and their associated equipment moving from infested areas of Canada into noninfested areas of the United States to provide a statement signed by the owner that the articles have been inspected and found free of gypsy moth. The use of self-inspections should minimize the costs associated with the importation of these items. Most individual homeowners who reside in areas of the United States quarantined because of

gypsy moth and who move their own articles currently choose to self-inspect and issue the signed statement for the movement of their outdoor household articles. This process takes a few minutes for each item and involves no monetary cost unless treatment is necessary. For commercial movers, self-issuing documents could help avoid the costs of delays, but could still result in costs associated with time, salary, and recordkeeping for the self-inspections.

When inspection reveals the presence of gypsy moth, the individual in possession of the infested articles must either return the articles to their place of origin, treat them, or destroy them. Loads of trees without roots (e.g., Christmas trees), trees with roots, shrubs with roots and persistent woody stems, or logs would be an expensive loss if destroyed, which would occur if the shipper decided against the alternatives (i.e., return to Canada or treatment). Fumigation is one treatment alternative, but another—manually spraying caterpillars and scraping egg masses—is a less costly treatment alternative. Either treatment is usually done by qualified, certified applicators. In applications in the United States, fumigation costs average between $100 to $150 per shipment. Manual treatment would be considerably less expensive. We do not know at the current time how many entities will be affected by these treatment requirements.

Other costs of implementing this rule involve border crossings. This rule will add time to border crossings because it will be necessary to ascertain whether a recreational vehicle or mobile home is coming from an area of Canada known to be infested with gypsy moth or an area free of gypsy moth. There is no data on the number of recreational vehicles and mobile homes crossing the border from Victoria, British Columbia, or from other infested areas of Canada. When primary Customs Service and Immigration and Naturalization Service inspectors question the origin of all recreational vehicles and mobile homes crossing into the United States and distribute information on gypsy moth to their owners, only a few seconds will be added to each border crossing. However, with potentially several thousand daily crossings of recreational vehicles from all areas of Canada at peak times, this added time could result in some delays. Some of the recreational vehicles and mobile homes originating in Canadian infested areas, as well as those owners who are unsure of origin and others at the discretion of the primary inspectors, will be sent to secondary inspection, where APHIS inspectors will ensure that owners understand the need to inspect their recreational vehicles and mobile homes for the presence of gypsy moth. Depending on the number of recreational vehicles and mobile homes sent to secondary inspections, there may be a need for additional staff at border crossings.

The inspection and certification requirements of this rule are expected to cause a slight increase in the costs of business for a limited number of affected entities, but the overall impact on price and competitiveness is expected to be relatively insignificant. Additionally, we believe that any increase in costs experienced by entities under this rule change will be very small when compared to the benefits. The benefits of this rule include avoided Federal, State, and local government costs and avoided damages to forest resources resulting from a widespread gypsy moth outbreak in noninfested areas of the United States.

Alternatives Considered

The alternative to this rule that we considered was to make no changes in the regulations, instead relying on border inspections and the Canadian gypsy moth program to prevent the entry of gypsy moth into noninfested areas of the United States from infested areas of Canada. We rejected this alternative after determining that these measures would likely prove to be an inadequate response to the risk posed by gypsy moth host material entering the United States from Canada.

The changes to the regulations will result in new information collection or recordkeeping requirements, as described below under the heading ''Paperwork Reduction Act.''

Executive Order 12988

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

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this interim rule have been approved by the Office of Management and Budget (OMB). OMB has assigned control number 0579–0142 to the information collection and recordkeeping requirements. However, a request for a 3-year approval of the information collection and recordkeeping requirements has been submitted to OMB.

Please send written comments on the 3-year approval request to the following addresses: (1) Docket No. 98–110–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. Please state that your comments refer to Docket No. 98–110–1 and send them within 60 days of publication of this rule.

This interim rule establishes regulations for the importation into the United States of gypsy moth host materials from Canada due to infestations of gypsy moth in the Provinces of British Columbia, New Brunswick, Nova Scotia, Ontario, and Quebec. These regulations require trees without roots (e.g., Christmas trees), trees with roots, shrubs with roots and persistent woody stems, logs and pulpwood with bark attached, outdoor household articles, and mobile homes and their associated equipment to meet specified certification or destination requirements if they are intended to be moved into or through areas of the United States that are not infested with gypsy moth.

This interim rule is designed to prevent the introduction of gypsy moth into the United States from Canada by placing certain inspection and documentation requirements on gypsy moth host materials (i.e., regulated articles) from Canada. These regulated articles are: Trees without roots (e.g., Christmas trees), trees with roots, shrubs with roots and persistent woody stems, logs and pulpwood with bark attached, outdoor household articles, and mobile homes and their associated equipment. Under this interim rule, phytosanitary certificates, certificates of origin, or signed homeowner statements will be required for some of these regulated articles, depending on their place of origin in Canada and their destination in the United States. We are asking OMB to approve these information collections in connection with our efforts to ensure that regulated articles imported from Canada do not introduce gypsy moth into noninfested areas of the United States.

We are soliciting comments from the public (as well as affected agencies) concerning this information collection activity. We need this outside input to help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions,

including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average .03469 hours per response.

Respondents: Canadian plant health authorities; growers, exporters, shippers of Christmas trees, shrubs, logs, pulpwood, and other articles from Canada; and private individuals entering the United States with mobile homes or outdoor household articles.

Estimated annual number of respondents: 2,120.

Estimated annual number of responses per respondent: 1.047.

Estimated annual number of responses: 2,220.

Estimated total annual burden on respondents: 77 hours.

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. In Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products, § 319.37–5 is amended by adding a new paragraph (p) to read as follows:

§ 319.37–5 Special foreign inspection and certification requirements.

* * * * *

(p) In addition to meeting the requirements of this subpart, any trees with roots and any shrubs with roots and persistent woody stems, unless greenhouse-grown throughout the year, that are imported from Canada will be subject to the inspection and certification requirements for gypsy moth in § 319.77–4 of this part.

3. In Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles, § 319.40–2 is amended by adding a new paragraph (f) to read as follows:

§ 319.40–2 General prohibitions and restrictions; relation to other regulations.

* * * * *

(f) In addition to meeting the requirements of this subpart, logs and pulpwood with bark attached imported from Canada are subject to the inspection and certification requirements for gypsy moth in § 319.77–4 of this part.

4. Subpart—Gypsy Moth Host Material from Canada is added to read as follows:

Subpart—Gypsy Moth Host Material from Canada

Sec.

319.77–1 Definitions.
319.77–2 Regulated articles.
319.77–3 Gypsy moth infested areas in Canada.
319.77–4 Conditions for the importation of regulated articles.
319.77–5 Disposition of regulated articles denied entry.

Subpart—Gypsy Moth Host Material from Canada

§ 319.77–1 Definitions.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

Canadian infested area. Any area of Canada listed as a gypsy moth infested area in § 319.77–3 of this subpart.

Canadian noninfested area. Any area of Canada that is not listed as a gypsy moth infested area in § 319.77–3 of this subpart.

Certificate of origin. A document issued by an official authorized by the national government of Canada that states the area in which a regulated article was produced or grown and includes any other required additional declarations.

Gypsy moth. The insect known as the gypsy moth, Lymantria dispar (Linnaeus), in any stage of development.

Import (imported, importation). To bring or move into the territorial limits of the United States.

Mobile home. Any vehicle, other than a recreational vehicle, designed to serve, when parked, as a dwelling or place of business.

Outdoor household articles. Articles associated with a household that are generally kept or used outside the home. Examples of outdoor household articles are awnings, barbeque grills, bicycles, boats, dog houses, firewood, garden tools, hauling trailers, outdoor furniture and toys, recreational vehicles and their associated equipment, and tents.

Phytosanitary certificate. A document issued by an official authorized by the national government of Canada that contains a description of the regulated article intended for importation into the United States and that certifies that the article has been thoroughly inspected or treated, is believed to be free from plant pests, and is otherwise believed to be eligible for importation pursuant to the current phytosanitary laws and regulations of the United States. A phytosanitary certificate must be addressed to the Animal and Plant Health Inspection Service and may be issued no more than 14 days prior to the shipment of the regulated article.

Recreational vehicles. Vehicles, including pickup truck campers, one-piece motor homes, and travel trailers, designed to serve as temporary places of dwelling.

United States. All of the States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

U.S. infested area. Any area of the United States listed as a gypsy moth generally infested area in § 301.45–3 of this chapter.

U.S. noninfested area. Any area of the United States that is not listed as a gypsy moth generally infested area in § 301.45–3 of this chapter.

§ 319.77–2 Regulated articles.

In order to prevent the spread of gypsy moth from Canada into noninfested areas of the United States, the gypsy moth host materials listed in paragraphs (a) through (g) of this section are designated as regulated articles. Regulated articles may be imported into the United States from Canada only under the conditions described in § 319.77–4 of this subpart.

(a) Trees without roots (e.g., Christmas trees), unless they were greenhouse-grown throughout the year;

(b) Trees with roots, unless they were greenhouse-grown throughout the year;

(c) Shrubs with roots and persistent woody stems, unless they were greenhouse-grown throughout the year;

(d) Logs with bark attached;

(e) Pulpwood with bark attached;

(f) Outdoor household articles; and
(g) Mobile homes and their associated equipment.

§ 319.77–3 Gypsy moth infested areas in Canada.

The following areas in Canada are known to be infested with gypsy moth:

(a) *Province of British Columbia.* That portion of Vancouver Island, in the areas of Victoria and Nanaimo, that includes the following Land Districts: Comiaken, Cowichan, Esquimalt, Goldstream, Helmecken, Highlands, Lake, Malahat, Metchosin, North Saanich, Otter, Quamichaan, Sahatlam, Seymour,Shawnigan, Somenos, Sooke, South Saanich, and Victoria.

(b) *Province of New Brunswick.* That portion of the Province of New Brunswick that includes the following counties: Charlotte, Kings, Queens, Sunbury, and York.

(c) *Province of Nova Scotia.* That portion of the Province of Nova Scotia that includes the following counties: Annapolis, Digby, Halifax, Hants, Kings, Lunenberg, Queens, Shelburne, and Yarmouth.

(d) *Province of Ontario.* That portion of the Province of Ontario that includes the Districts of Algoma, Maritoulin, Nipissing, and Sudbury and the following counties and regional municipalities: Brant, Bruce, Dufferin,Durham, Elgin, Essex, Frontenac, Grey, Haldimand-Norfolk, Haliburton, Halton,Hamilton-Wentworth, Hastings, Huron, Kent, Lambton, Lanark, Leeds-Granville,Lennox-Addington, Middlesex, Muskoka, Niagara, Northumberland, Ottawa-Carleton, Oxford, Parry Sound, Peel, Perth, Peterborough, Prescott-Russell,Prince Edward, Renfrew, Simcoe, Stormont-Dundas-Glengarry, Victoria, Waterloo,Wellington, and York.

(e) *Province of Quebec.* That portion of the Province of Quebec that includes the following regional municipalities: Acton, Antoine-Labelle,Argenteuil, Arthabaska, Asbestos, Beauce-Sartigan, Beauharnois-Salaberry,Becancour, Bellechasse, Brome-Missisquoi, Champlain, Coaticook, CommunauteUrbaine de Montreale, Communaute Urbaine de L'Outaouais, Communaute Urbaine deQuebec, D'Autray, Desjardins, Deux-Montages, Drummond, Francheville, Joliette,L'Amiante, L'Assomption, L'Erable, L'Ile-D'Orleans, Lajemmerais, Laval, LaNouvelle-Beauce, La Riviere-Du-Nord, La Vallee-De-La-Gatineau, La Vallee-Du-Richelieu, Le Bas-Richelieu, Le Centre-De-La-Mauricie, Le Granit, Le Haut-Richelieu, Le Haut-Saint-Francois, Le Haut-Saint-Laurent, Le Haute-Yamaska, LeVal-Saint-Francois, Les Chutes-De-La-Chaudire, Les Collines-De-L'Outaouais,Les Etchemins, Les Jardins-De-Napierville, Les Laurentides, Les Maskoutains,Les Moulins, Les Pays-D'En-Haut, Lotbinere, Maskinonge, Matawinie,Mamphremagog, Mirabel, Montcalm, Montmagny, Nicolet-Yamaska, Papineau,Pontiac, Portneuf, Robert-Cliche, Roussillon, Rouville, Sherbrooke,Therese-De-Blainville, and Vaudreuil-Soulanges.

§ 319.77–4 Conditions for the importation of regulated articles.

(a) *Trees and shrubs.*[1] Trees without roots (e.g., Christmas trees), trees with roots, and shrubs with roots and persistent woody stems may be imported into the United States from any area of Canada without restriction under this subpart if they:

(i) Were greenhouse-grown throughout the year; or

(ii) Are destined for a U.S. infested area and will not be moved through any U.S. noninfested areas.

(2) Trees without roots (e.g., Christmas trees), trees with roots, and shrubs with roots and persistent woody stems that are destined for a U.S. noninfested area or will be moved through a U.S. noninfested area may be imported into the United States from Canada only under the following conditions:

(i) If the trees or shrubs originated in a Canadian infested area, they must be accompanied by an officially endorsed Canadian phytosanitary certificate that includes an additional declaration confirming that the trees or shrubs have been inspected and found free of gypsy moth or that the trees or shrubs have been treated for gypsy moth in accordance with the PlantProtection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

(ii) If the trees or shrubs originated in a Canadian noninfested area, they must be accompanied by a certificate of origin stating that they were produced in an area of Canada where gypsy moth is not known to occur.

(b) *Logs and pulpwood with bark attached.*[2] (1) Logs or pulpwood with bark attached that are destined for a U.S. infested area and that will not be moved through any U.S. noninfested area may be imported from any area of Canada without restriction under this subpart.

(2) Logs or pulpwood with bark attached that are destined for a U.S. noninfested area or will be moved through a U.S. noninfested area may be imported into the United States from Canada only under the following conditions:

(i) If the logs or pulpwood originated in a Canadian infested area, they must be either:

(A) Accompanied by an officially endorsed Canadian phytosanitary certificate that includes an additional declaration confirming that they have been inspected and found free of gypsy moth or that they have been treated for gypsy moth in accordance with the Plant Protection and Quarantine TreatmentManual, which is incorporated by reference at § 300.1 of this chapter; or

(B) Destined for a specified U.S. processing plant or mill under compliance agreement with the Animal and Plant Health Inspection Service for specified handling or processing.

(ii) If the logs or pulpwood originated in a Canadian noninfested area, they must be accompanied by a certificate of origin stating that they were produced in an area of Canada where gypsy moth is not known to occur.

(c) *Outdoor household articles and mobile homes and their associated equipment.* (1) Outdoor household articles and mobile homes and their associated equipment that are destined for a U.S. infested area and will not be moved through any U.S. noninfested areas may be imported from any area in Canada without restriction under this subpart.

(2) Outdoor household articles and mobile homes and their associated equipment that are being moved from a Canadian noninfested area may be imported into any area of the United States without restriction under this subpart.

(3) Outdoor household articles and mobile homes and their associated equipment that are being moved from a Canadian infested area into a U.S. noninfested area, or that will be moved through a U.S. noninfested area, may be imported into the United States only if they are accompanied by a statement, signed by their owner, stating that they have been inspected and found free of gypsy moth.

(Approved by the Office of Management and Budget under control number 0579–0142)

§ 319.77–5 Disposition of regulated articles denied entry.

Any regulated article that is denied entry into the United States because it

[1] Trees and shrubs from Canada that are capable of propagation may be subject to additional restrictions under ''Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products'' (§§ 319.37 through 319.37–14 of this part).

[2] Logs from Canada are also subject to restrictins under ''Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles'' (§§ 319.40 through 319.40–11 of this part).

does not meet the requirements of this subpart must be promptly safeguarded or removed from the United States. If the article is not promptly safeguarded or removed from the United States, it may be seized, destroyed, or otherwise disposed of in accordance with section 10 of the Plant QuarantineAct (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act(7 U.S.C. 150dd and 150ff).

Done in Washington, DC, this 16th day of August 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–21754 Filed 8–20–99; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–29–AD; Amendment 39–11259; AD 99–17–11]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that requires repetitive inspections to detect wear of the inboard flap trunnions, and to detect wear or debonding of the protective half-shells; and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct chafing and resultant wear damage on the inboard flap drive trunnions or on the protective half-shells, which could result in failure of the trunnion primary load path; this would adversely affect the fatigue life of the secondary load path and could lead to loss of the flap.

DATES: Effective September 27, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of September 27, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on September 15, 1998 (63 FR 49309). That action proposed to require repetitive inspections to detect wear of the inboard flap trunnions; and replacement, if necessary. That action also proposed to require repetitive inspections to detect wear or debonding of the protective half-shells, and corrective actions, if necessary.

Comments Received

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

Request to Approve Terminating Modification

Two commenters request that the modification described in Airbus Service Bulletin A320–27–1117, dated July 31, 1997, be considered as terminating action for the repetitive inspections required by the proposed AD. One commenter states that the manufacturer has completed its in-service evaluation of this service bulletin and has determined that the modification is an appropriate terminating action. Another commenter, the manufacturer, notes that this modification solution, Airbus Modification 26495, has been installed on airplanes in production beginning with manufacturer's serial number (MSN) 789.

The FAA concurs with the commenter's request. Since issuance of the supplemental NPRM, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has advised the FAA that accomplishment of the modification described in A320–27–1117 would effectively eliminate the need to perform the repetitive inspections, and has issued French airworthiness directive 1996–271–092(B) R2, dated February 24, 1999, to reflect this finding. The FAA has determined that such a modification constitutes appropriate terminating action for the repetitive inspections required by this AD, and has revised the applicability of the final rule and added a new paragraph (e) to the final rule to provide for accomplishment of Airbus Modification 26495 in production, or Airbus Service Bulletin A320–27–1117, dated July 31, 1997, or Revision 01, dated June 25, 1999, as an optional terminating action for the requirements of this AD.

Service Bulletin Revisions

Airbus has issued the following Service Bulletin revisions: A320–27–1108, Revision 02, dated April 17, 1998, and Revision 03, dated June 25, 1999; and A320–27–1097, Revision 02, dated June 25, 1999. These later revisions of the service bulletins describe certain administrative changes, and delete the repair previously recommended if wear marks are found on the flap trunnions. In lieu of the repair, the service bulletin revisions specify accomplishment of the modification described in A320–27–1117. The FAA has determined that the actions required by this AD may be accomplished in accordance with these later revisions of the service bulletins, and has revised the final rule to include them as appropriate sources of service information.

Conclusion

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

Cost Impact

The FAA estimates that 132 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $7,920, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of

the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–17–11 Airbus Industrie: Amendment 39–11259. Docket 96–NM–29–AD.

Applicability: Model A319, A320, and A321 series airplanes; except airplanes on which Airbus Modification 26495 has been installed in production, or on which Airbus Service Bulletin A320–27–1117, dated July 31, 1997, or Revision 01, dated June 25, 1999, has been accomplished; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct chafing and resultant wear damage on the inboard flap drive trunnions or on the protective half-shells, which could result in failure of the trunnion primary load path, adversely affect the fatigue life of the secondary load path, and lead to loss of the flap; accomplish the following:

Inspections/Corrective Actions

(a) For airplanes on which a protective half-shell has been installed over area 1 of the left or right inboard flap trunnion: Perform a detailed visual inspection of the protective half-shell (area 1) to detect wear or debonding, and perform a detailed visual inspection of the trunnion (area 2) to detect wear at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable; in accordance with Airbus Service Bulletin A320–27–1108, Revision 01, dated July 15, 1997, Revision 02, April 17, 1998, or Revision 03, June 25, 1999.

(1) For Model A319 and Model A320 series airplanes on which Airbus Modification 22841 has been installed: Inspect prior to the accumulation of 2,500 flight hours after the incorporation of the modification, or within 500 flight hours after the effective date of this AD, whichever occurs later.

(2) For Model A321 series airplanes on which Airbus Modification 23926 has been installed, or on which the repair specified in Airbus Service Bulletin A320–27–1097, dated October 5, 1996, or Revision 01, dated July 15, 1997, has been accomplished; and for Model A320 series airplanes on which the repair specified in Airbus Service Bulletin A320–27–1066, Revision 3, dated October 30, 1996, or Revision 4, dated July 15, 1997, has been accomplished: Inspect prior to the accumulation of 5,000 flight hours after incorporation of the repair or modification, or within 500 flight hours after the effective date of this AD, whichever occurs later.

(3) For Airbus Model A320 series airplanes on which Airbus Modification 22881 has been accomplished, and on which Airbus Modification 22841 or the modification specified in Airbus Service Bulletin A320–27–1050 has not been accomplished: Inspect within 500 flight hours after the effective date of this AD.

(b) For airplanes on which no protective half-shell is installed over area 1 of the left or right inboard flap trunnion: Within 500 flight hours after the effective date of this AD, perform a detailed visual inspection of areas 1 and 2 of the inboard flap trunnion to detect wear on the trunnion, in accordance with Airbus Service Bulletin A320–27–1066, Revision 4, dated July 15, 1997 (for Model A320 series airplanes); or A320–27–1097, Revision 01, dated July 15, 1997, or Revision 02, dated June 25, 1999 (for Model A321 series airplanes).

(c) Except as provided by paragraph (d) of this AD: Following the accomplishment of any inspection required by either paragraph (a) or (b) of this AD, perform the follow-on repetitive inspections and/or corrective actions, as applicable, in accordance with Airbus Service Bulletin A320–27–1066, Revision 4, dated July 15, 1997 (for Model A320 series airplanes); A320–27–1097, Revision 01, dated July 15, 1997, or Revision 02, dated June 25, 1999 (for Model A321 series airplanes); or A320–27–1108, Revision 01, dated July 15, 1997, Revision 02, dated April 17, 1998, or Revision 03, dated June 25, 1999 (for Model A319, A320, and A321 series airplanes); as applicable; at the compliance times specified in the applicable service bulletin.

(d) If the applicable service bulletin specifies to contact Airbus for an appropriate action, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Générale del'Aviation Civile (or its delegated agent).

Optional Terminating Action

(e) Accomplishment of the modification described in Airbus Service Bulletin A320–27–1117, dated July 31, 1997, or Revision 01, dated June 25, 1999, constitutes terminating actions for the requirements of this AD. Following accomplishment of the modification, no further action is required by this AD.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(g) 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.

Incorporation by Reference

(h) Except as provided by paragraph (d) of this AD, the actions shall be done in accordance with Airbus Service Bulletin A320–27–1108, Revision 01, dated July 15,

1997; Airbus Service Bulletin A320–27–1108, Revision 02, dated April 17, 1998; Airbus Service Bulletin A320–27–1108, Revision 0303, dated June 25, 1999; Airbus Service Bulletin A320–27–1066, Revision 4, dated July 15, 1997; Airbus Service Bulletin A320–27–1097, Revision 01, dated July 15, 1997; and/or Airbus Service Bulletin A320–27–1097, Revision 0202, dated June 25, 1999; 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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directives 96–271–092(B) R1, dated October 8, 1997, and 1996–271–092(B) R2, dated February 24, 1999.

(i) This amendment becomes effective on September 27, 1999.

Issued in Renton, Washington, on August 10, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–21365 Filed 8–20–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–129–AD; Amendment 39–11260; AD 99–17–12]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146 and Model Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146 and Model Avro 146–RJ series airplanes, that requires a one-time measurement to determine the thickness of the outer links of the side stays of the main landing gear (MLG), and corrective actions, if necessary. This amendment also provides for replacement of a thin outer link with a new or serviceable part in lieu of certain follow-on inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent cracking of the outer links of the side stays of the MLG, which could result in failure of a side stay, and consequent collapse of the landing gear.

DATES: Effective September 27, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 27, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146 and Model Avro 146–RG series airplanes was published in the **Federal Register** on September 8, 1998 (63 FR 47445). That action proposed to require a one-time measurement to determine the thickness of the outer links of the side stays of the main landing gear (MLG), and corrective actions, if necessary. That action also proposed to provide for replacement of a thin outer link with a new or serviceable part in lieu of certain follow-on inspections.

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

Request to Allow Flight With Cracks

One commenter, the manufacturer, requests that the proposal be revised to allow flight with certain specified cracking limits. The commenter points out that, although the inspection for cracking is easily accomplished, the replacement of a cracked part is difficult (necessitates acquisition of the replacement part and takes about 12 hours of elapsed time for the installation). The commenter states that a side stay with a 1 millimeter (mm) crack in the outer links of the side stays of the MLG was returned to the commenter, and was then subjected to fatigue testing by applying 20,000 cycles of the test spectra, where 1 cycle of test spectra was equivalent to 1 flight. The crack grew to 30 mm in length. The side stay was then tested to 130 percent and finally to 165 percent of limit load without failure (i.e., in excess of ultimate load). The commenter notes that, based on those fatigue testing results, the United Kingdom Civil Aviation Authority (CAA) granted approval for continued revenue service with cracking detected up to 19.05 mm, and required inspections to detect cracking at intervals of 70 landings, up to a maximum of 500 landings.

The FAA concurs with the commenter's request in this case. Since the outer link of the main landing gear side stay is readily inspectable for cracking during the normal operation of the airplane, the FAA has determined that cracking could be discovered at a remote site, but that acquiring parts and accomplishing the repair would be difficult. In addition, the FAA has determined that the commenter has provided a conservative demonstration that the airplane can retain FAA-certificated strength requirements for a limited period of time until the cracked part is replaced. Therefore, continued flight of the airplane may be permitted when cracking exists that is within the limits described in the service bulletin, provided that visual inspections for cracking and eventual replacement of the cracked part are performed at the times specified in the final rule. The FAA has revised paragraph (a)(2)(ii)(B) of the final rule and added a new paragraph (a)(2)(ii)(C) to the final rule that reflect these changes.

Request to Revise the Unsafe Condition

This same commenter notes that while the proposal states that cracking of the outer links of the side stays of the MLG could ''result in increased braking distance during landing and consequent runway overrun,'' the actual unsafe condition is that the cracking could result in failure of the side stay, which would result in collapse of the main landing gear.

The FAA infers that the commenter is requesting that the unsafe condition be revised. The FAA acknowledges that, although the proposal describes one possible unsafe outcome of a main landing gear collapse, other unsafe outcomes are possible. The FAA concurs that, in this case, the commenter's suggested revision is preferable to the proposal's description in that it is a more precise statement of the actual consequence of cracking of the outer links of the side stays of the

MLG. The FAA has revised the final rule to reflect the commenter's suggestion.

In addition, the FAA has added a new ''**Note 4**'' to the final rule to add a definition of the term ''detailed visual inspection.''

Conclusion

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

Cost Impact

The FAA estimates that 37 Model BAe 146 and Model Avro 146–RJ series airplanes of U.S. registry will be affected by this AD. It will take approximately 1 work hour per airplane to accomplish the required measurement, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on this figure, the cost impact of the measurement required by this AD on U.S. operators is estimated to be $2,220, or $60 per airplane.

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

Regulatory Impact

The regulations adopted herein will not have 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–17–12 British Aerospace Regional Aircraft (Formerly British Aerospace Regional Aircraft Limited, Avro International Aerospace Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Amendment 39–11260. Docket 97–NM–129–AD.

Applicability: Model BAe 146 and Model Avro 146–RJ series airplanes, equipped with side stays of the main landing gear (MLG) having part numbers (P/N) listed in Messier-Dowty Service Bulletin 146–32–128, dated December 6, 1996; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the outer links of the side stays of the main landing gear (MLG), which could result in failure of a side stay, and consequent collapse of the landing gear; accomplish the following:

(a) Within 500 landings or 60 days after the effective date of this AD, whichever occurs later, perform a one-time measurement to determine the thickness of the outer links of the side stays of the MLG, in accordance with British Aerospace Service Bulletin SB.32–144, dated December 11, 1996.

Note 2: The British Aerospace service bulletin references Messier-Dowty Service Bulletin 146–32–128, dated December 6, 1996, as an additional source of service information for accomplishment of the measurement.

(1) If the profile gauge does not slip over the top edge of the outer link profile, no further action is required by this AD.

(2) If the profile gauge slips over the top edge of the outer link profile, prior to further flight, accomplish either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Replace the outer link with a new or serviceable part in accordance with the service bulletin. After replacement of the outer link, no further action is required by this AD.

Note 3: For purposes of this AD, a ''serviceable'' outer link is defined as an outer link that is not cracked and on which a profile gauge does not slip over the top edge of the profile, as described in the service bulletin.

(ii) Perform a detailed visual inspection to detect cracking of the outer links of the side stays of the MLG, in accordance with the service bulletin.

Note 4: For the purposes of this AD, a detailed visual inspection is defined as: ''As intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(A) If no cracking is detected, repeat the detailed visual inspection thereafter at intervals not to exceed 4,000 landings.

(B) If any cracking of only one flange of an outer link is detected, and the cracking is within the limits specified by the service bulletin: Repeat the detailed visual inspection at intervals not to exceed 70 landings, and replace the cracked outer link with a new or serviceable part in accordance with the service bulletin within 500 landings after the cracking is detected. After replacement of the outer link, no further action is required by this AD.

(C) If any cracking of more than one flange of an outer link is detected, or if any cracking is detected that is outside the limits specified by the service bulletin: Prior to further flight, replace the cracked outer link with a new or serviceable part in accordance with the service bulletin. After replacement of the outer link, no further action is required by this AD.

(b) As of the effective date of this AD, no person shall install on any airplane a side stay of the MLG having a part number listed in paragraph 1.A. of Messier-Dowty Service Bulletin 146–32–128, dated December 6, 1996; unless the profile gauge does not slip over the profile of the outer links of the side stay, as described in British Aerospace Service Bulletin SB.32–144, dated December 11, 1996.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, 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, International Branch, ANM–116.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(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.

Incorporation by Reference

(e) The actions shall be done in accordance with British Aerospace Service Bulletin SB.32–144, dated December 11, 1996. 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 AI(R) American Support , Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 6: The subject of this AD is addressed in British airworthiness directive 005–12–96.

(f) This amendment becomes effective on September 27, 1999.

Issued in Renton, Washington, on August 10, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–21364 Filed 8–20–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 99F–0487]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of fatty acids, C_{10-13}-branched, vinyl esters as a comonomer in polymers used as components of adhesive formulations intended for use in contact with food. This action responds to a petition filed by Exxon Chemical Co.

DATES: This regulation is effective August 23, 1999. Submit written objections and requests for a hearing by September 22, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 25, 1999 (64 FR 14451), FDA announced that a food additive petition (FAP 9B4650) had been filed by Exxon Chemical Co., P.O. Box 3272, Houston, TX 77253–3272. The petition proposed to amend the food additive regulations in § 175.105 *Adhesives* (21 CFR 175.105) to provide for the safe use of fatty acids, C_{10-13}-branched, vinyl esters as a comonomer in polymers used as components of adhesives intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations in § 175.105 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this final rule as announced in the notice of filing for FAP 9B4650. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before September 22, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 175.105 is amended in the table in paragraph (c)(5) by alphabetically adding an entry under the category ''Polymers: Homopolymers and copolymers of the following monomers'' under the heading ''Substances'' to read as follows:

§ 175.105 Adhesives.

* * * * *

(c) * * * (5) * * *

Substances	Limitations
* * * *	* * *
Polymers: Homopolymers and copolymers of the following monomers: * * *	
Fatty acids, C_{10-13}-branched, vinyl esters (CAS Reg. No. 184785–38–4).	
* * * *	* * *

Dated: August 5, 1999.

Janice F. Oliver,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–21727 Filed 8–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 98F–1034]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the expanded safe use of naphthalene sulfonic acid-formaldehyde condensate, sodium salt as an emulsifier in vinylidene chloride copolymer or homopolymer coatings applied to polypropylene films and polyethylene phthalate films intended for use in contact with food. This action is in response to a petition filed by Solvay S.A.

DATES: This regulation is effective August 23, 1999. Submit written objections and requests for a hearing by September 22, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 2, 1998 (63 FR 66549), as corrected (64 FR 1023, January 7, 1999), FDA announced that a food additive petition (FAP 9B4634) had been filed by Solvay S.A., c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 178.3400 *Emulsifiers and/or surface active agents* (21 CFR 178.3400) to provide for the expanded safe use of naphthalene sulfonic acid-formaldehyde condensate, sodium salt as an emulsifier in vinylidene chloride copolymer or homopolymer coatings applied to polypropylene films and polyethylene phthalate films intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations in § 178.3400 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 9B4634 (63 FR 66549). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before September 22, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.3400 is amended in the table in paragraph (c) by alphabetically adding an entry under the headings ''List of substances'' and ''Limitations'' to read as follows:

§ 178.3400 Emulsifiers and/or surface active agents.

* * * * *

(c) * * *

List of substances	Limitations
* * *	* * * *
Naphthalene sulfonic acid-formaldehyde condensate, sodium salt (CAS Reg. No. 9084–06–4).	For use only: 1. At levels not to exceed 10 micrograms/in^2 (0.16 mg/dm^2) in vinylidene chloride copolymer or homopolymer coatings applied to films of propylene polymers complying with § 177.1520 of this chapter. 2. At levels not to exceed 14 micrograms/in^2 (0.21 mg/dm^2) in vinylidene chloride copolymer or homopolymer coatings applied to films of polyethylene phthalate polymers complying with § 177.1630 of this chapter.
* * *	* * * *

* * * * *

Dated: August 10, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–21728 Filed 8–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8836]

RIN 1545–AW85

Capital Gains, Installment Sales, Unrecaptured Section 1250 Gain

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the taxation of capital gains on installment sales of depreciable real property. The regulations interpret changes made by the Taxpayer Relief Act of 1997, as amended by the Internal Revenue Service Restructuring and Reform Act of 1998 and the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999. The regulations affect persons required to report capital gain from an installment sale where a portion of the capital gain is unrecaptured section 1250 gain and a portion is adjusted net capital gain.

DATES: *Effective Date:* These regulations are effective August 23, 1999.

Applicability Date: These regulations apply to installment payments properly taken into account after August 23, 1999.

FOR FURTHER INFORMATION CONTACT: Susan Kassell, (202) 622–4930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1). On January 22, 1999, a notice of proposed rulemaking relating to the taxation of capital gains on installment sales of depreciable real property was published in the **Federal Register** (64 FR 3457). No comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested or held. The proposed regulations are adopted without substantive change by this Treasury decision.

Explanation of Provisions

In 1997 Congress amended section 1(h) generally to reduce the maximum capital gain tax rates for individuals. As amended, section 1(h) generally divides a taxpayer's net capital gain into several rate groups. A maximum marginal rate of 28 percent applies to 28-percent rate gain, which is not pertinent to these final regulations. A maximum marginal rate of 25 percent applies to unrecaptured section 1250 gain (25-percent gain), which is defined in section 1(h)(7)(A) as the amount of long-term capital gain (not otherwise treated as ordinary income) that would be treated as ordinary income if section 1250(b)(1) included all depreciation and the applicable percentage under section 1250(a) were 100 percent, reduced by any net loss in the 28-percent rate category. A maximum marginal rate of 20 percent applies to adjusted net capital gain (20/10-percent gain), defined in section 1(h)(4) as the portion of net capital gain that is not taxed at the 28-percent or 25-percent rates. A reduced rate of 10 percent is applied to the portion of the taxpayer's adjusted net capital gain that would otherwise be taxed at a 15-percent rate.

Under the final regulations, if a portion of the capital gain from an installment sale of real depreciable property consists of 25-percent gain, and a portion consists of 20/10-percent gain, the taxpayer is required to take the 25-percent gain into account before the 20/10-percent gain, as payments are received. In addition, an example in the regulations illustrates that section 1231 gain from an installment sale that is recharacterized as ordinary gain under section 1231(c) is deemed to consist first of 25-percent gain, and then 20/10-percent gain. Consistent with this treatment and with the general rule that 25-percent gain is taken into account first, another example in the regulations illustrates that, where there is installment gain that is characterized as ordinary gain under section 1231(a) because there is a net section 1231 loss for the year, the gain is treated as consisting of 25-percent gain first, before 20/10-percent gain, for purposes of determining how much 25-percent gain remains to be taken into account in later payments.

The final regulations also provide that the capital gain rates applicable to installment payments that are received on or after the effective date of the 1997 Act from sales prior to the effective date are determined as if, for all payments received after the date of sale but before the effective date, 25-percent gain had been taken into account before 20/10-percent gain. The regulations further

provide that, in the event the cumulative amount of 25-percent gain actually reported in installment payments received during the period between the effective date of section 1(h) and the effective date of these regulations was less than the amount that would have been reported using the front-loaded allocation method of the regulations, the amount of 25-percent gain actually reported, rather than an amount determined under a front-loaded allocation method, must be used in determining the amount of 25-percent gain that remains to be reported.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Susan Kassell and Rob Laudeman, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.453–12 is added to read as follows:

§ 1.453–12 Allocation of unrecaptured section 1250 gain reported on the installment method.

(a) *General rule.* Unrecaptured section 1250 gain, as defined in section 1(h)(7), is reported on the installment method if that method otherwise applies under section 453 or 453A and the corresponding regulations. If gain from an installment sale includes unrecaptured section 1250 gain and adjusted net capital gain (as defined in section 1(h)(4)), the unrecaptured section 1250 gain is taken into account before the adjusted net capital gain.

(b) *Installment payments from sales before May 7, 1997.* The amount of unrecaptured section 1250 gain in an installment payment that is properly taken into account after May 6, 1997, from a sale before May 7, 1997, is determined as if, for all payments properly taken into account after the date of sale but before May 7, 1997, unrecaptured section 1250 gain had been taken into account before adjusted net capital gain.

(c) *Installment payments received after May 6, 1997, and on or before August 23, 1999.* If the amount of unrecaptured section 1250 gain in an installment payment that is properly taken into account after May 6, 1997, and on or before August 23, 1999, is less than the amount that would have been taken into account under this section, the lesser amount is used to determine the amount of unrecaptured section 1250 gain that remains to be taken into account.

(d) *Examples.* In each example, the taxpayer, an individual whose taxable year is the calendar year, does not elect out of the installment method. The installment obligation bears adequate stated interest, and the property sold is real property held in a trade or business that qualifies as both section 1231 property and section 1250 property. In all taxable years, the taxpayer's marginal tax rate on ordinary income is 28 percent. The following examples illustrate the rules of this section:

Example 1. General rule. This example illustrates the rule of paragraph (a) of this section as follows:

(i) In 1999, A sells property for $10,000, to be paid in ten equal annual installments beginning on December 1, 1999. A originally purchased the property for $5000, held the property for several years, and took straight-line depreciation deductions in the amount of $3000. In each of the years 1999–2008, A has no other capital or section 1231 gains or losses.

(ii) A's adjusted basis at the time of the sale is $2000. Of A's $8000 of section 1231 gain on the sale of the property, $3000 is attributable to prior straight-line depreciation deductions and is unrecaptured section 1250 gain. The gain on each installment payment is $800.

(iii) As illustrated in the table in this paragraph (iii) of this *Example 1.*, A takes into account the unrecaptured section 1250 gain first. Therefore, the gain on A's first three payments, received in 1999, 2000, and 2001, is taxed at 25 percent. Of the $800 of gain on the fourth payment, received in 2002, $600 is taxed at 25 percent and the remaining $200 is taxed at 20 percent. The gain on A's remaining six installment payments is taxed at 20 percent. The table is as follows:

	1999	2000	2001	2002	2003	2004–2008	Total gain
Installment gain	800	800	800	800	800	4000	8000
Taxed at 25%	800	800	800	600	.....	.....	3000
Taxed at 20%	.....	.....	.....	200	800	4000	5000
Remaining to be taxed at 25%	2200	1400	600	.....	.....	.....	.....

Example 2. Installment payments from sales prior to May 7, 1997. This example illustrates the rule of paragraph (b) of this section as follows:

(i) The facts are the same as in *Example 1* except that A sold the property in 1994, received the first of the ten annual installment payments on December 1, 1994, and had no other capital or section 1231 gains or losses in the years 1994–2003.

(ii) As in *Example 1*, of A's $8000 of gain on the sale of the property, $3000 was attributable to prior straight-line depreciation deductions and is unrecaptured section 1250 gain.

(iii) As illustrated in the following table, A's first three payments, in 1994, 1995, and 1996, were received before May 7, 1997, and taxed at 28 percent. Under the rule described in paragraph (b) of this section, A determines the allocation of unrecaptured section 1250 gain for each installment payment after May 6, 1997, by taking unrecaptured section 1250 gain into account first, treating the general rule of paragraph (a) of this section as having applied since the time the property was sold, in 1994. Consequently, of the $800 of gain on the fourth payment, received in 1997, $600 is taxed at 25 percent and the remaining $200 is taxed at 20 percent. The gain on A's remaining six installment payments is taxed at 20 percent. The table is as follows:

	1994	1995	1996	1997	1998	1999-2003	Total gain
Installment gain	800	800	800	800	800	4000	8000
Taxed at 28%	800	800	800	.....	.....	.....	2400
Taxed at 25%	.....	.....	.....	600	.....	.....	600
Taxed at 20%	.....	.....	.....	200	800	4000	5000
Remaining to be taxed at 25%	2200	1400	600	.....	.....	.....	.....

Example 3. Effect of section 1231(c) recapture. This example illustrates the rule of paragraph (a) of this section when there are non-recaptured net section 1231 losses, as defined in section 1231(c)(2), from prior years as follows:

(i) The facts are the same as in *Example 1*, except that in 1999 A has non-recaptured net section 1231 losses from the previous four years of $1000.

(ii) As illustrated in the table in paragraph (iv) of this *Example 3*, in 1999, all of A's $800 installment gain is recaptured as ordinary income under section 1231(c). Under the rule described in paragraph (a) of this section, for purposes of determining the amount of unrecaptured section 1250 gain remaining to be taken into account, the $800 recaptured as ordinary income under section 1231(c) is treated as reducing unrecaptured section 1250 gain, rather than adjusted net capital gain. Therefore, A has $2200 of unrecaptured section 1250 gain remaining to be taken into account.

(iii) In the year 2000, A's installment gain is taxed at two rates. First, $200 is recaptured as ordinary income under section 1231(c). Second, the remaining $600 of gain on A's year 2000 installment payment is taxed at 25 percent. Because the full $800 of gain reduces unrecaptured section 1250 gain, A has $1400 of unrecaptured section 1250 gain remaining to be taken into account.

(iv) The gain on A's installment payment received in 2001 is taxed at 25 percent. Of the $800 of gain on the fourth payment, received in 2002, $600 is taxed at 25 percent and the remaining $200 is taxed at 20 percent. The gain on A's remaining six installment payments is taxed at 20 percent. The table is as follows:

	1999	2000	2001	2002	2003	2004-2008	Total gain
Installment gain	800	800	800	800	800	4000	8000
Taxed at ordinary rates under section 1231(c)	800	200	.....	.....	.....	.....	1000
Taxed at 25%	.....	600	800	600	.....	.....	2000
Taxed at 20%	.....	.....	.....	200	800	4000	5000
Remaining non-recaptured net section 1231 losses	200	.....	.....	.....	.....	.....	.....
Remaining to be taxed at 25%	2200	1400	600	.....	.....	.....	.....

Example 4. Effect of a net section 1231 loss. This example illustrates the application of paragraph (a) of this section when there is a net section 1231 loss as follows:

(i) The facts are the same as in *Example 1* except that A has section 1231 losses of $1000 in 1999.

(ii) In 1999, A's section 1231 installment gain of $800 does not exceed A's section 1231 losses of $1000. Therefore, A has a net section 1231 loss of $200. As a result, under section 1231(a) all of A's section 1231 gains and losses are treated as ordinary gains and losses. As illustrated in the following table, A's entire $800 of installment gain is ordinary gain. Under the rule described in paragraph (a) of this section, for purposes of determining the amount of unrecaptured section 1250 gain remaining to be taken into account, A's $800 of ordinary section 1231 installment gain in 1999 is treated as reducing unrecaptured section 1250 gain. Therefore, A has $2200 of unrecaptured section 1250 gain remaining to be taken into account.

(iii) In the year 2000, A has $800 of section 1231 installment gain, resulting in a net section 1231 gain of $800. A also has $200 of non-recaptured net section 1231 losses. The $800 gain is taxed at two rates. First, $200 is taxed at ordinary rates under section 1231(c), recapturing the $200 net section 1231 loss sustained in 1999. Second, the remaining $600 of gain on A's year 2000 installment payment is taxed at 25 percent. As in *Example 3*, the $200 of section 1231(c) gain is treated as reducing unrecaptured section 1250 gain, rather than adjusted net capital gain. Therefore, A has $1400 of unrecaptured section 1250 gain remaining to be taken into account.

(iv) The gain on A's installment payment received in 2001 is taxed at 25 percent, reducing the remaining unrecaptured section 1250 gain to $600. Of the $800 of gain on the fourth payment, received in 2002, $600 is taxed at 25 percent and the remaining $200 is taxed at 20 percent. The gain on A's remaining six installment payments is taxed at 20 percent. The table is as follows:

	1999	2000	2001	2002	2003	2004–2008	Total gain
Installment gain	800	800	800	800	800	4000	8000
Ordinary gain under section 1231(a)	800	.....	.....	.....	.....	.....	800
Taxed at ordinary rates under section 1231(c)	.....	200	.....	.....	.....	.....	200
Taxed at 25%	.....	600	800	600	.....	.....	2000
Taxed at 20%	.....	.....	.....	200	800	4000	5000
Net section 1231 loss	200	.....	.....	.....	.....	.....	.....
Remaining to be taxed at 25%	2200	1400	600	.....	.....	.....	.....

(e) *Effective date.* This section applies to installment payments properly taken into account after August 23, 1999.

John M. Darymple,

Acting Deputy Commissioner of Internal Revenue.

Approved: August 9, 1999.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 99–21755 Filed 8–20–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

[Army Reg. 340-21]

Privacy Act; Implementation

AGENCY: Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Army is amending an existing exemption rule for a Privacy Act system of records. The Army is providing reasons from which information maintained within this system of records may be exempt. These reasons were administratively omitted last publication.

EFFECTIVE DATE: August 23, 1999.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 220605576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 8064390 or DSN 6564390.

SUPPLEMENTARY INFORMATION:

Executive Order 12866. It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of Subjects in 32 CFR Part 505

Privacy.

1.The authority citation for 32 CFR part 505 continues to read as follows:

Authority: Pub. L. 93579, 88 Stat. 1896 (5 U.S.C. 552a).

2.Section 505.5, is amended by revising paragraph (e)(13) as follows:

§505.5Exemptions.

* * * * *

(e) * * *

(13)*System identifier:* A0190-47 DAMO.

(i)*System name:* Correctional Reporting System (CRS).

(ii)*Exemption.* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws. All portions of this system of records which fall within the scope of 5 U.S.C. 552a(j)(2) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g).

Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Army will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Army'sPrivacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis necessary for effective law enforcement.

(iii) *Authority:* 5 U.S.C. 552a(j)(2).

(iv) *Reasons:* (A) From subsection (c)(3) because the release of the disclosure accounting, or disclosures pursuant to the routine uses published for this system, would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), this subsection will not be applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(E) From subsections (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsections (j)(2) of the Privacy Act of 1974.

(F) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(G) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e) (5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(H) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(I) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(J) From subsection (g) because this system of records compiled for lawenforcement purposes and has been exempted from the access provisions of subsections (d) and (f).

* * * * *

Dated: August 17, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–21739 Filed 8–20–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 05–99–041]

RIN 2115–AA97

Safety Zone: Virginia Beach Weekly Fireworks Display, Rudee Inlet, Virginia Beach, Virginia, and Atlantic Ocean, Coastal Waters, Between 17th and 20th Street, Virginia Beach, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone around a fireworks-laden vessel being used for the Virginia Beach Weekly Fireworks Display, to be held on the waters of the Atlantic Ocean, approximately 1,000 yards off Virginia Beach, Virginia, between 17th and 20th Streets. This zone is intended to restrict vessel traffic around the fireworks-laden vessel during its transit to the launch site and during the fireworks display. It is necessary to protect mariners and spectators from the hazards associated with both transporting fireworks and the fireworks display.

EFFECTIVE DATE: This regulation is effective 8 p.m. on June 1, 1999, until 11 p.m. on September 5, 1999.

FOR FURTHER INFORMATION CONTACT: Lieutenant Karrie Trebbe, project officer, USCG Marine Safety Office Hampton Roads, telephone number (757) 441–3290.

SUPPLEMENTARY INFORMATION: Notice of Proposed Rule Making (NPRM) was published for this temporary final rule. In keeping with 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. In keeping with the requirements of 5 U.S.C. 533(d)(3), the Coast Guard also finds good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard received this request for a temporary safety zone on May 21, 1999. Delaying the effective date of the rule would be contrary to the public interest, as immediate action is necessary to protect the vessels and spectators from the hazards associated with both transporting fireworks and the fireworks display.

Discussion of the Temporary Final Rule

The Coast Guard is establishing a temporary safety zone around a fireworks-laden vessel being used for the Virginia Beach Weekly Fireworks Display, to be held on the waters of the Atlantic Ocean, approximately 1,000 yards off Virginia Beach, Virginia, between 17th and 20th Streets. This action is intended to restrict vessel traffic around the fireworks-laden vessel during its transit through Rudee Inlet, Virginia Beach, Virginia; during its transit from Rudee Inlet to the fireworks launch site; and during the fireworks display. The safety zone is necessary to protect mariners and spectators from the hazards associated with both transporting fireworks and the fireworks display.

The Virginia Beach Weekly Fireworks Display will be held each Sunday evening starting on May 30, 1999, and ending on September 5, 1999. The safety zone will be enforced only on those Sundays, between 8 p.m. and 11 p.m. Entry into this safety zone is prohibited unless authorized by the Captain of the Port Hampton Roads or his designated representative. Public notifications will be made before the event by local notices to mariners and marine-information broadcasts.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This rule affects only a limited area for 3 hours, once a week, and affects only the waters within a 150-foot radius of the fireworks-laden vessel as it transits to the launch site and the waters within a 1,000-foot radius of the launch site. The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this temporary final rule will have a significant economic impact on a substantial number of small entities. ''Small Entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule affects only a limited area for 3 hours, once a week, and affects only the waters within a 150-foot radius of the fireworks-laden vessel as it transits to the launch site and the waters within a 1,000-foot radius of the launch site. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This temporary final rule does not provide for a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this temporary final rule under the principles and criteria contained in Executive Order 12612, and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has analyzed this temporary final rule and concluded that, under figure 2–1, paragraph (34)(g) of COMDTINST M16475.1C, this rule is categorically excluded from further environmental documentation. Rules establishing safety zones are excluded under that authority.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

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

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

2. A new temporary § 165.T05–041 is added to read as follows:

§ 165.T05–041 Safety Zone: Virginia Beach Weekly Fireworks Display, Rudee Inlet, Virginia Beach, Virginia, and Atlantic Ocean, Coastal Waters, between 17th and 20th Street Virginia Beach, Virginia.

(a) *Location*. The following area is a safety zone: All waters within a 150-foot radius of a fireworks-laden vessel as it transits through Rudee Inlet and from Rudee Inlet to the fireworks launch site about 1,000 yards off the coast of Virginia Beach, Virginia, between 17th and 20th streets, and all waters within a 1,000-foot radius of the fireworks launch site.

(b) *Effective date*. This section is effective from 8 p.m. on June 1, 1999 until 11 p.m. on September 5, 1999. It will be enforced only on Sunday starting on June 1, 1999, and ending on September 5, 1999, between 8 p.m. and 11 p.m.

(c) *Captain of the Port*. Captain of the Port means the Commanding Officer of the Marine Safety Office Hampton Roads, Norfolk, VA, or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(d) *Regulations*. (1) In accordance with the general regulations in §§ 165.23 and 165.501, entry into this safety zone is prohibited unless authorized by the Captain of the Port of his designated representative.

(2) Persons or vessels requiring entry into or passage through the safety zone must first request authorization from the Captain of the Port or his designated representative. The vessels enforcing the safety zone are available on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port or his representative is available at (757) 484–8192.

(3) The Captain of the Port will notify the public of changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

Dated: June 1, 1999.

J.E. Schrinner,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. 99–21767 Filed 8–20–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1–99–141]

RIN 2115–AA97

Safety Zone: Chelsea Street Bridge Fender System Repair, Chelsea River, Chelsea, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Chelsea Street Bridge fender system repairs on the Chelsea River. The safety zone temporarily closes all waters of the Chelsea River 100 yards upstream and 100 yards downstream from the centerline of the Chelsea Street Bridge. The safety zone is needed to protect vessels from the hazards posed during repairs to the bridge fender system.

DATES: This rule is effective between the hours of 9:00 p.m. and 5:00 a.m., Monday through Friday, from August 4, 1999 through August 31, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Marine Safety Office, Boston, 455 Commercial Street, Boston, Massachusetts, 02109, between 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–3000.

FOR FURTHER INFORMATION CONTACT: ENS Rebecca Montleon, Waterways Management Division, Coast Guard Marine Safety Office Boston, (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Details of the repairs to the bridge fender system were not provided to the Coast Guard until July 22, 1999, making it impossible to publish a NPRM or a final rule 30 days in advance with sufficient time for public comment. Any delay encountered in this regulation's effective date would be contrary to the public interest since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with bridge construction activities upon a navigable waterway.

Background and Purpose

The Chelsea Street Bridge over the Chelsea River, Chelseas, MA, fender system is in need of repairs. During the repairs, barges will be moored in the center of the channel under the bridge, and pilings will be removed and/or replaced. The placement of the barge will require the closure of the waterway for the safety of vessels during the repairs to the bridge fender system. Therefore, a safety zone is necessary to allow the safe removal of pilings, repairs to the fender system, and to protect vessel traffic.

This regulation establishes a safety zone in all waters of the Chelsea River 100 yards upstream and 100 yards downstream from the centerline of the Chelsea Street Bridge. This safety zone prevents entry into or movement within this portion of the Chelsea River. The expected duration of the safety zone will be between the hours of 9:00 p.m. and 5:00 a.m., Monday through Friday from August 4, 1999 until August 31, 1999. The Coast Guard will make Marine Safety Information Broadcasts informing mariners of this safety zone.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the limited recreational and commercial traffic expected in the area, and the fact that commercial operators have received advance notification of the project and can make alternate arrangements.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit

organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that, under Figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

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

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

2. Add temporary § 165.T01–141 to read as follows:

§ 165.T01–141 Safety Zone: Chelsea Street Bridge fender system repair, Chelsea River, Chelsea, MA.

(a) *Location*. The following area is a safety zone: All waters of the Chelsea River 100 yards upstream and 100 yards downstream for the centerline of the Chelsea Street Bridge.

(b) *Effective date*. This section is effective between the hours of 9:00 p.m. and 5:00 a.m., Monday through Friday, from August 4, 1999 through August 31, 1999.

(c) *Regulations*. (1) Entry into or movement within this zone is prohibited unless authorized by the COTP Boston.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(3) The general regulations covering safety zones in § 165.23 apply.

Dated: August 4, 1999.

J.R. Whitehead,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 99–21789 Filed 8–20–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[PA118–4080a; FRL–6426–1]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Pennsylvania; Large Municipal Waste Combustors (MWCs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is granting conditional approval of the Commonwealth of Pennsylvania's municipal waste combustor (MWC) 111(d)/129 plan submitted by the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, on April 27, 1998, and as amended on September 8, 1998. This action is a conditional approval because the submitted plan does not contain an expeditious compliance schedule for the supplemental MWC emissions guidelines (EG) limits promulgated on August 25, 1997. The plan was submitted to fulfill requirements of the Clean Air Act (CAA), and the EG that are applicable to existing MWC facilities with an individual unit combustor capacity greater than 250 tons per day (TPD) of municipal solid waste. An existing MWC unit is one for which construction commenced on or before September 20, 1994.

DATES: This final rule is effective October 22, 1999 unless, on or before September 22, 1999, adverse or critical comments are received. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the above EPA address and by contacting Krishnan Ramamurthy at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, Rachel Carson State Office Building, 400 Market Street, Harrisburg, Pennsylvania 17105–8468.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at topsale.jim@epamail.gov. While information may be obtained via e-mail, any comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

Section 111(d) of the CAA requires that ''designated'' pollutants controlled under standards of performance for new stationary sources by Section 111(b) of the CAA must also be controlled at existing sources in the same source category. Also, Section 129 of the CAA specifically addresses solid waste combustion. It requires EPA to establish emission guidelines (EG) for MWC units and requires states to develop state plans for implementing the promulgated EG. The Part 60, Subpart Cb, EG for MWC units differ from other EG adopted in the past because the rule addresses both Sections 111(d) and 129 CAA requirements. Section 129 requirements override certain related aspects of Section 111(d).

On December 19, 1995, pursuant to Sections 111 and 129 of the CAA, EPA promulgated new source performance standards (NSPS) applicable to new MWCs (i.e., those for which construction was commenced after September 20, 1994) and EG applicable to existing MWCs. The NSPS and EG are codified at 40 CFR Part 60, Subparts Eb and Cb, respectively. *See* 60 FR 65387 and 65415. Subparts Eb and Cb regulate MWC emissions. Emissions from MWCs contain organics (dioxin/furans), metals (cadmium, lead, mercury, particulate matter, opacity), and acid gases,

(hydrogen chloride, sulphur dioxide, and nitrogen oxides).

On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated Subparts Cb and Eb as they apply to MWC units with capacity to combust less than or equal to 250 tons per day (TPD) of municipal solid waste (MSW), consistent with their opinion in *Davis County Solid Waste Management and Recovery District* v. *EPA,* 101 F.3d 1395 (D.C. Cir. 1996), *as amended,* 108 F.3d 1454 (D.C. Cir. 1997). As a result, Subparts Cb and Eb were amended to apply only to MWC units with the capacity to combust more than 250 TPD of MSW per unit (i.e., large MWC units). Also, the amended EG made minor revisions to the emissions limitations for four pollutants—hydrogen chloride, sulfur dioxide, oxides of nitrogen, and lead. The amended requirements of the NSPS and EG were published in the **Federal Register** on August 25, 1997. *See* 62 FR 45119 and 45124 for the EG amendments.

Section 129(b)(2) of the CAA requires States to submit to EPA for approval state plans that implement and enforce the EG. State Plans must be ''at least as protective'' as the EG, and become Federally enforceable upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR Part 60, Subpart B. EPA originally promulgated the Subpart B provisions on November 17, 1975. However, EPA amended Subpart B on December 19, 1995, to allow the source specific subparts developed under Section 129 to include requirements that supersede the general provisions in Subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules. *See* 60 FR 65414.

As required by Section 129(b)(3) of the CAA, on November 12, 1998 EPA promulgated a Federal Implementation Plan (FIP) for large MWCs that commenced construction on or before September 20, 1994. The FIP is a set of emissions limits, compliance schedules, and other requirements that implement the MWC EG, as amended. The FIP is applicable to those large existing MWCs not specifically covered by an approved State plan under Sections 111(d) and 129 of the CAA. Also, it fills a Federal enforceability gap until State plans are approved and ensures that the MWC units stay on track to complete pollution control equipment retrofit schedules to meet the final statutory compliance date of December 19, 2000. However, the FIP no longer applies once a State plan is approved. Unlike a FIP for sources regulated under Sections 110 or 172, the Section 111(d)/129 FIP imposes no statutory or other sanctions because of deficient or unapproved state plans. An approved State plan is a State plan that EPA has reviewed and approved based on the requirements of 40 CFR Part 60, Subpart B to implement and enforce 40 CFR Part 60, Subpart Cb. *See* 63 FR 63192.

As noted above, emissions from MWCs contain organics (dioxin/furans), metals (cadmium, lead, mercury, particulate matter, opacity), and acid gases, (hydrogen chloride, sulphur dioxide, and nitrogen oxides). These pollutants can cause adverse effects to the public health and the environment. Dioxin, lead and mercury can bioaccumulate in the environment. Acid gases contribute to the acid rain that lowers the pH of surface waters and watersheds, harms forests, and damages buildings. In addition, nitrogen oxides emissions can contribute to the formation of ground level ozone, which is associated with a number of adverse health and environmental effects.

II. Review of the Commonwealth of Pennsylvania's MWC 111(d)/129 Plan

EPA has reviewed the Commonwealth of Pennsylvania's (the ''Commonwealth'') 111(d)/129 plan for existing large MWC units in the context of the requirements of 40 CFR Part 60, and Subparts B and Cb, as amended. A summary of that review is provided below.

A. Identification of Enforceable State Mechanism for Implementing the EG

The regulation at 40 CFR 60.24(a) requires that the Section 111(d) plan include emissions standards, defined in 40 CFR 60.21(f) as ''a legally enforceable regulation setting forth an allowable rate of emissions into the atmosphere, or prescribing equipment specifications for control of air pollution emissions.'' EPA interprets the term ''regulation'' in 60.21(f) to include, in addition to a uniform state requirement or state rule, other mechanisms that are legally enforceable under state law. These other mechanisms could include, for example, an administrative order, a compliance order, or a state operating permit. A state may select these other enforceable mechanisms provided that the state demonstrates that it has the underlying authority and demonstrates that the selected mechanism is state enforceable. Additional guidance on this matter is found in EPA's ''Municipal Waste Combustion: Summary of the Requirements for Section 111(d)/129 Plans for Implementing the Municipal Waste Combustor Emission Guidelines (EPA–456R–96–003, July 1996). On December 27, 1997, the Pennsylvania Department of Environmental Protection (PADEP) adopted and incorporated by reference (27 Pa. B. 6809) the federal EG for MWCs. Subsequently, on April 27, 1998 the PADEP submitted to EPA its MWC 111(d)/129 plan. At the time of submittal, the PADEP recognized that the plan did not contain the required legally enforceable mechanism and compliance dates to implement the adopted EG and related plan. On September 8, 1998, the PADEP submitted five (5) MWC federally enforceable state operating permits (FESOPs) and one (1) MWC plan approval (i.e., construction permit) to serve as the legally enforceable mechanisms for implementating its 111(d)/129 plan. Under the terms and conditions of the submitted permits, the applicable EG requirements (Subpart Cb) are nonexpiring and continue in full force and effect until modified by the PADEP as a 111(d)/129 plan revision. The PADEP has met the requirements of 40 CFR 60.24(a) to have legally enforceable emission standards.

B. Demonstration of Legal Authority

Title CFR 60.26 requires the 111(d) plan to demonstrate that the State has legal authority to adopt and implement the emission standards and compliance schedules. As noted above, a state may select the use of an enforceable mechanism, other than a regulation, to implement the plan, providing the state demonstrates its legal authority to enforce the mechanism. The 111(d)/129 plan submitted by PADEP includes a legal opinion that the PADEP has sufficient statutory and regulatory authority under its plan approval (under Pennsylvania regulations a plan approval is a permit to construct) and state operating permit programs to implement applicable requirements adopted under Sections 111(d) and 129 of the CAA. A copy of the Commonwealth's Air Pollution Control Act (35 P.S. 4001 et. seq.) and the applicable regulations in 25 Pa. Code Article III (relating to air resources) for the issuance of plan approvals, State operating permits, and Title V permits were also submitted with the 111(d)/129 plan. The PADEP has demonstrated that it has the legal authority to adopt and implement the emission standards and compliance schedules governing MWC emissions. This meets the requirements of 40 CFR 60.26.

C. Inventory of MWCs in Pennsylvania Affected by the EG

Title 40 CFR 60.25(a) requires the 111(d) plan to include a complete source inventory of all existing large

MWCs (i.e., unit capacity greater than 250 TPD). The PADEP has identified six (6) facilities with individual MWC units having combustion capacities greater than 250 TPD. The Commonwealth of Pennsylvania inventory of existing large MWC units identifies the following MWC plants: (1) American Ref-Fuel of Delaware Valley, LP (formerly Delaware County Resource Recovery Facility); (2) the Harrisburg Materials, Energy, Recycling and Recovery Facility; (3) Lancaster County Solid Waste Management Authority; (4) Montenay Montgomery Limited Partnership; (5) Wheelabrator Falls, Inc., Bucks County; and (6) York County Resource Recovery Center.

D. Inventory of Emissions From MWCs in Pennsylvania

Title 40 CFR 60.25(a) requires that the plan include an emissions inventory that estimates emissions of the pollutant regulated by the EG. Emissions from MWCs contain organics (dioxin/furans), metals (cadmium, lead, mercury, particulate matter, opacity), and acid gases (hydrogen chloride, sulphur dioxide, and nitrogen oxides). For each MWC plant, the PADEP plan contains information on estimated MWC emission rates in terms of concentrations and mass emissions rates. The emissions rates data were obtained from source stack tests, continuous emission monitors, and utilization of EPA estimating procedures (AP–42). This meets the emission inventory requirements of 40 CFR 60.25(a).

E. Emission Limitations for MWCs

Title 40 CFR 60.24(c) specifies that the State plan must include emission standards that are no less stringent than the EG, except as specified in 40 CFR 60.24(f) which allows for less stringent emission limitations on a case-by-case basis if certain conditions are met. However, this exception clause is superseded by Section 129(b)(2) of the CAA which requires that state plans be ''at least as protective'' as the EG. Title 40 CFR 60.33b of the EG contain the emissions limitation applicable to existing large MWCs. The FESOPs and plan approval submitted by PADEP reference applicable emissions limitations that are consistent and ''at least as protective'' as those in the EG, as amended.

F. Compliance Schedules

A state Section 111(d) plan must include a compliance schedule that owners and operators of affected MWCs must meet in complying with the requirements of the plan. Any proposed revision to a compliance schedule is subject to the requirements of Subpart B, 60.28, Plan revisions by the State. Title 40 CFR 60.39b of the EG provides that planning, awarding of contracts, and installation of air emission collection and control equipment capable of meeting the EG requirements must be accomplished within 3 years of EPA plan approval, but in no case later than December 19, 2000. As a result of the *Davis County* litigation, noted above, compliance with supplemental EG emissions limits for lead, sulfur dioxide, hydrogen chloride, and nitrogen oxides could extend until August 26, 2002, or 3 years after EPA approval of the 111(d)/129 plan, whichever is earlier. However, Section 129(f)(2) of the CAA states that requirements promulgated pursuant to Sections 111 and 129 must be effective ''as expeditiously as practicable after approval of a State plan.''

The PADEP submittal requires compliance with the original 1995 EG emissions limits no later than December 19, 2000. However, PADEP's submittal requires compliance with the 1997 EG supplemental emissions limits later than August 26, 2002, or 3 years after EPA approval of the 111(d)/129 plan, whichever is earlier. In accordance with Section 129(f)(2) and the FIP promulgated for MWCs and its background information document, EPA has determined that the final compliance dates for the supplemental emissions limits, stipulated in the 111(d)/129 plan FESOPs and plan approval submitted by PADEP are not expeditious. *See* 63 FR 63196. The exception is the Harrisburg MWC facility permit which requires the permittee to cease operation no later than December 19, 2000. The same types of air pollution control technology serve as the basis for both the 1995 EG limits and the 1997 EG amended (supplemental) limits. That technology consists of spray dryer/fabric filter or electrostatic precipitator (ESP), carbon injection, and selective non-catalytic reduction (SNCR) for non-refractory combustor types. The plan submitted by PADEP contains no economic, technical, or other rationale to justify a compliance date extension until August 26, 2002 for the supplemental emissions limits.

Title 40 CFR 60.24(e)(1) provides that any compliance schedule, extending more than 12 months from the date required for plan submittal, shall include legally enforceable increments of progress as specified in 40 CFR 60.21(h), including deadlines for submittal of a final control plan, awarding of contracts for emission control systems, initiation of on-site construction or installation of emission control equipment, completion of on-site construction/ installation of emission control equipment, and final compliance. In addition, 40 CFR 60.39b requires that all large MWCs for which construction was commenced after June 26, 1987 must meet the mercury and dioxins/furans emissions limitations within one year following issuance of a revised construction or operating permit, if a permit modification is required, or within one year following EPA approval of the State plan, whichever is later. The MWC FESOPs and plan approval establish interim and final compliance schedules, as required by 40 CFR 60.24(e)(1), and 60.39b. However, as noted above, Section 129(f)(2) of the CAA stipulates that requirements promulgated pursuant to Sections 111 and 129 must be effective ''as expeditiously as practicable after approval of a State plan.''

Therefore, EPA is approving the FESOPs and plan approval interim and final compliance schedules submitted by PADEP for the original 1995 EG emissions limits, but is not approving PADEP's final compliance schedule (August 26, 2002, or 3 years after EPA approval of the state plan, whichever is earlier) for the 1997 supplemental emissions limits submitted by PADEP. *See* 62 FR 45116. EPA is granting conditional approval of the 111(d)/129 plan submitted on August 27, 1998 and as amended September 8, 1998 for MWCs. EPA will fully approve the final compliance schedule for the supplemental emissions limits after the PADEP submits amended FESOPs, or some other appropriate State enforceable mechanism, to require final compliance of the 1997 supplemental emission limits by no later than December 19, 2000. In the interim, the December 19, 2000 compliance date provisions for meeting the 1997 supplemental emission limits, imposed in the FIP promulgated on November 12, 1998, shall continue to apply to the sources in Pennsylvania.

H. Testing, Monitoring, Record Keeping, and Reporting Requirements

The EG at 40 CFR 60.38b and 60.39b cross reference applicable NSPS requirements (Subpart Eb) for MWCs relating to performance testing, monitoring, reporting and recordkeeping requirements that state plans must include. The FESOPs and plan approval submitted by PADEP meet the requirements of 40 CFR 60.38b and 60.39b.

I. A Record of Public Hearing on the State Plan

Public hearings were held in Conshohocken and Harrisburg, PA on January 7 and 8, 1998, respectively. Notices for both hearings were published in the *PA Register* and two newspapers on December 6, 1997, and one newspaper on December 7, 1997, more than 30 days prior to the respective public hearing dates. The State plan includes the records from both of the noted public hearings. The PADEP certified on April 27, 1998 that the 40 CFR 60.23 public hearing requirements were met. The state provided evidence of complying with EPA public notice and other hearing requirements, including a record of public comments received. The 40 CFR 60.23 requirement for a public hearing on the 111(d)/129 plan has been met by the PADEP.

J. Provision for Annual State Progress Reports to EPA

The PADEP will submit to EPA on an annual basis a report which details the progress in the enforcement of the MWC 111(d)/129 plan in accordance with 40 CFR 60.25. The first progress report will be submitted to EPA one year after the approval of Commonwealth's MWC 111(d)/129 plan by EPA.

III. Final Action

Based upon the rationale discussed above and in further detail in the technical support document (TSD) associated with this action, EPA is conditionally approving the Commonwealth of Pennsylvania's MWC 111(d)/129 plan for the control of MWC emissions from affected facilities. With the explicit exception of the compliance schedule and date for meeting the 1997 supplemental emissions limits, the provisions of the FIP promulgated on November 12, 1998 no longer apply to affected facilities in the Commonwealth. The provisions of the November 12, 1998 FIP for MWCs promulgated on November 12, 1998 regarding the compliance schedule and date for meeting the 1997 supplemental emissions limits continue to apply to affected facilities in the Commonwealth. EPA's approval of the Commonwealth's 111(d)/129 plan is conditioned upon the submittal of a 111(d)/129 plan revision that contains an enforceable mechanism(s) that requires affected facilities to be in full compliance with all supplemental emissions limits (lead, sulfur dioxide, hydrogen chloride, and nitrogen oxides) no later than December 19, 2000. That submittal must be made by the Commonwealth to EPA by no later than August 22, 2000. If Pennsylvania fails to meet the condition by the due date indicated above, EPA will notify the PADEP by letter that the condition of this plan approval has not been met, that the conditional approval of its 111(d)/129 plan for MWCs has converted to a disapproval, and that the entire FIP for MWCs promulgated on November 12, 1998 (63 FR 63191) has been reinstated in the Commonwealth. Subsequently, a notice will be published in the **Federal Register** announcing that the Commonwealth's MWC 111(d)/129 whole plan has been disapproved and the entire FIP promulgated on November 12, 1998 will be reinstated. Upon fulfillment of the condition by the due date specified, EPA's conditional approval shall be converted to a full approval and the provisions of the FIP for MWCs promulgated on November 12, 1998 (63 FR 63191) relating to the compliance schedule for supplemental emissions limits shall no longer apply in the Commonwealth.

The 1995 original and 1997 supplemental emissions limitations and compliance schedule requirements are not applicable to the Harrisburg MWC facility provided it ceases operation no later than December 19, 2000, as stipulated under the terms and conditions of its FESOP, and remains shut down.

The submitted FESOPs and plan approval include PADEP new source review and other requirements that are outside the scope of the 111(d)/129 plan requirements. EPA is taking no action on those PADEP requirements that are outside the scope of the EG and 111(d)/129 plan requirements. As provided by 40 CFR 60.28(c), any revisions to the Commonwealth's MWC 111(d)/129 plan or associated regulations, FESOPs, and plan approval will not be considered part of the applicable plan until submitted by the PADEP in accordance with 40 CFR 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR Part 60, Subpart B, requirements.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the 111(d) plan should relevant adverse or critical comments be filed. This rule will be effective October 22, 1999 without further notice unless the Agency receives relevant adverse comments by September 22, 1999.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect, and that the MWC FIP requirements remain in effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Only parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 22, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Orders 12866

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

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of Section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is ''economically significant,'' as defined under E.O. 12866, and (2) the environmental health

or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. Pursuant to Section 605(b) of the RFA, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This Federal action approves pre-existing requirements under Federal, State, or Local law and imposes no new requirements on any entity affected by this rule, including small entities. Therefore, these amendments will not have a significant impact on a substantial number of small entities.

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 22, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Municipal waste combustors, Reporting and recordkeeping requirement.

Dated: August 11, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR Part 62, Subpart NN, is amended as follows:

Part 62—[AMENDED]

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart NN—Pennsylvania

2. A new center heading and §§ 62.9640, 62.9641, and 62.9642 are added to read as follows:

Metals, Acid Gases, Organic Compounds and Nitrogen Oxide Emissions From Existing Municipal Waste Combustors With a Unit Capacity Greater Than 250 Tons per Day

§ 62.9640 Identification of plan.

The 111(d)/129 plan for municipal waste combustors (MWC) with a unit capacity greater than 250 tons per day (TPD) and the associated Pennsylvania Department of Environmental Protection five (5) MWC federally enforceable state operating permits (FESOPs) and one (1) MWC plan approval (i.e., construction permit) that were submitted to EPA on April 27, 1998 and as amended on September 8, 1998. The 111(d)/129 plan is conditionally approved pending receipt, within one year of EPA plan approval, of an enforceable mechanism that requires affected facilities to be in compliance no later than December 19, 2000, with the 1997 MWC emissions

guidelines' supplemental emissions limits.

§ 62.9641 Identification of sources.

The plan applies to all existing MWC facilities with a MWC unit capacity greater than 250 TPD of municipal solid waste.

§ 62.9642 Effective date.

The effective date of the 111(d)/129 plan is October 22, 1999.

[FR Doc. 99–21658 Filed 8–20–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300907; FRL–6096–3]

RIN 2070–AB78

Buprofezin; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for residues of the insecticide buprofezin and its metabolites in or on tomatoes at 0.7 part per million (ppm) and tomato paste at 1.0 ppm for an additional 2-year period, and citrus fruit at 2.0 ppm; dried citrus pulp at 10 ppm; cotton seed at 1.0 ppm; cotton gin byproducts at 20 ppm; milk at 0.03 ppm; and cattle, sheep, hogs, goats, and horse meat and fat at 0.02 ppm; and meat byproducts at 0.5 ppm for an additional 29-month period. These tolerances will expire and are revoked on December 31, 2001. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on tomatoes, citrus, and cotton. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective August 23, 1999. Objections and requests for hearings must be received by EPA, on or before October 22, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300907], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300907], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300907]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 280, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9367, ertman.andrew@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of August 5, 1998 (63 FR 41720)(FRL–6018–5), which announced that on its own initiative under section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the residues of buprofezin and its metabolites in or on tomatoes at 0.7 ppm and tomato paste at 1.0 ppm, with an expiration date of December 31, 1999. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA issued a final rule, published in the **Federal Register** of July 30, 1997 (63 FR 40735)(FRL–5732–1), which announced that on its own initiative under section 408(1)(6), as amended by FQPA (Public Law 104–170) it established time-limited tolerances for the residues of buprofezin and its metabolites in or on citrus fruit at 2.0 ppm; dried citrus pulp at 10 ppm; cotton seed at 1.0 ppm; cotton gin byproducts at 20 ppm; milk at 0.03 ppm; and cattle, sheep, hogs, goats, and horse meat and fat at 0.02 ppm; and meat byproducts at 0.5 ppm; with an expiration date of July 31, 1998. EPA subsequently published a final rule in the **Federal Register** of June 19, 1998 (63 FR 33583) (FRL–5794–7), extending these tolerances to expire on July 31, 1999. EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of buprofezin on tomatoes for this year's growing season due to the continuation of the emergency condition with silverleaf whiteflies. Silverleaf whitefly is a key pest on tomatoes from the seedling stage through harvest in Florida year-round in all production regions. High populations feeding on plants cause irregular ripening, reducing fruit value. Whiteflies may also transmit tomato mottle geminivirus (TMV) and tomato yellow leaf curl virus (TYLCV) during feeding. TYLCV was discovered in tomatoes in Florida in the summer of 1997 and is, therefore, a new pest-related problem. Because whitefly is such a good vector of the virus and the virus is so prevalent, only minimal infestations of whitefly are required to transmit TYLCV to tomato plants. After having reviewed the submission, EPA concurs that emergency conditions

exist. EPA has authorized under FIFRA section 18 the use of buprofezin on tomatoes for control of silverleaf whiteflies in Florida.

EPA received a request to extend the use of buprofezin on citrus for this year's growing season to control red scale, which has developed resistance to available controls in some areas of California, and has caused significant losses for affected growers; this situation remains unchanged from that of last year. EPA also received requests from California and Arizona to extend the use of buprofezin on cotton for this year's growing season since the situation has remained the same as last year; a recently-introduced new strain or species of whitefly has caused significant losses to cotton growers and has demonstrated resistance to available controls. After having reviewed the submission, EPA concurs that emergency conditions exist for these states. EPA has authorized under FIFRA section 18 the use of buprofezin on citrus for control of red scale and on cotton for control of whiteflies.

EPA assessed the potential risks presented by residues of buprofezin in or on tomatoes, citrus and cotton. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rules of July 30, 1997 (62 FR 40735) and August 5, 1998 (63 FR 41720). Based on the data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances on tomatoes and tomato paste are extended for an additional 2-year period and the tolerances for citrus fruit, dried citrus pulp, cotton seed, cotton gin byproducts, milk, and cattle, sheep, hogs, goats, and horse meat, fat, and meat byproducts are extended for an additional 29-month period. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on tomatoes, tomato paste, citrus fruit, dried citrus pulp, cotton seed, cotton gin byproducts, milk, and cattle, sheep, hogs, goats, and horse meat, fat, and meat byproducts after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by October 22, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the ''ADDRESSES'' section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300907] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically

into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 11, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321q, 346a and 371.

2. In § 180.511, by revising the table in paragraph (b) to read as follows:

§ 180.511 Buprofezin; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ Revocation Date
Cattle, fat	0.02	12/31/01
Cattle, MBYP	0.5	12/31/01
Cattle, meat	0.02	12/31/01
Citrus fruit	2.0	12/31/01
Citrus, pulp, dried	10	12/31/01
Cotton seed	1.0	12/31/01
Cotton, gin byproducts	20	12/31/01
Curcurbits	0.5	12/31/99
Goats, fat	0.02	12/31/01
Goats, MBYP	0.5	12/31/01
Goats, meat	0.02	12/31/01
Hogs, fat	0.02	12/31/01
Hogs, MBYP	0.5	12/31/01

Commodity	Parts per million	Expiration/ Revocation Date
Hogs, meat	0.02	12/31/01
Horses, fat	0.02	12/31/01
Horses, MBYP	0.5	12/31/01
Horses, meat	0.02	12/31/01
Milk	0.03	12/31/01
Sheep, fat	0.02	12/31/01
Sheep, MBYP	0.5	12/31/01
Sheep, meat	0.02	12/31/01
Tomatoes	0.7	12/31/01
Tomato paste	1.0	12/31/01

* * * * *

[FR Doc. 99–21830 Filed 8–20–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300912; FRL–6097–8]

RIN 2070–AB78

Carfentrazone-ethyl; Extension of Tolerances for Emergency Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for combined residues of the herbicide carfentrazone-ethyl and its metabolites in or on rice, grain at 0.1 part per million (ppm) and rice, straw at 1.0 ppm for an additional 14–month period. These tolerances will expire and are revoked on December 31, 2000. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on rice. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective August 23, 1999. Objections and requests for hearings must be received by EPA, on or before October 22, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300912], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300912], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300912]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Steve Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 271, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9362, schaible.stephen@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of November 25, 1998 (63 FR 65073) (FRL–6040–7), which announced that on its own initiative under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) established time-limited tolerances for the combined residues of carfentrazone-ethyl and its metabolites in or on rice, grain at 0.1 ppm and rice, straw at 1.0 ppm, with an expiration date of December 31, 1999. EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of carfentrazone-ethyl on rice for this year's growing season due to the continued non-routine situation facing California rice growers; the ineffectiveness of registered alternatives at controlling California arrowhead and ricefield bulrush, combined with observed resistance in the weed population to the preferred registered herbicide, bensulfuron-methyl, has created a situation in which growers are likely to suffer significant economic losses without the requested use of carfentrazone-ethyl. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of carfentrazone-ethyl on rice for control of California arrowhead and ricefield bulrush in rice.

EPA assessed the potential risks presented by residues of carfentrazone-ethyl in or on rice. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of November 25, 1998 (63 FR 65073). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended for an additional 14–month period. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on December 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on rice grain and rice straw after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by October 22, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the ''ADDRESSES'' section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300912] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of

affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 11, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.515 [Amended]

2. In § 180.515, by amending the table in paragraph (b) by revising the date ''10/31/99'' to read ''12/31/00''.

[FR Doc. 99–21833 Filed 8–20–99; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 303–70

[FTR Amendment 86]

RIN 3090–AH04

Federal Travel Regulation; Agency Requirements for Payment of Expenses Connected With the Death of Certain Employees

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) provisions pertaining to payment by the Government of expenses connected with the death of certain employees while performing official Government travel, and for transportation of the remains of a member of the employee's immediate family who dies while residing with the employee outside the continental United States (CONUS) or in transit thereto or therefrom. This amendment implements the authority provided in 5 U.S.C. 5742 to pay certain expenses in connection with escort of remains of certain employees. It also amends a CFR section heading to clarify that the regulation applies when a member of an employee's immediate family is in transit from as well as to the employee's duty station outside CONUS.

DATES: This final rule is effective August 23, 1999, and applies to payment of expenses in connection with the escort of remains of certain employees on or after August 23, 1999.

FOR FURTHER INFORMATION CONTACT: Sandra Batton, Travel and Transportation Management Policy Division, at (202) 501–1538.

SUPPLEMENTARY INFORMATION:

A. Background

Public Law 105–277, October 21, 1998, amended 5 U.S.C. 5742 to allow for payment of travel expenses as follows:

the travel expenses of not more than 2 persons to escort the remains of a deceased employee, if death occurred while the employee was in travel status away from his official station in the United States or while performing official duties outside the United States or in transit thereto or therefrom, from the place of death to the home or official station of such person, or such other place appropriate for interment as is determined by the head of the agency concerned.

B. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

C. Executive Order 12866

The General Services Administration (GSA) has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 303–70

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, 41 CFR part 303–70 is amended as follows:

PART 303–70—AGENCY REQUIREMENTS FOR PAYMENT OF EXPENSES CONNECTED WITH THE DEATH OF CERTAIN EMPLOYEES

1. The authority citation for part 303–70 continues to read as follows:

Authority: 5 U.S.C. 5721–5738; 5741–5742; E.O. 11609, 3 CFR, 1971–1975 Comp., p. 586.

2. Section 303–70.100 is revised to read as follows:

§ 303–70.100 May we pay the travel expenses for an escort for the remains of a deceased employee?

Yes, in accordance with §§ 303–70.600 through 303–70.602.

3. Section 303–70.403 is amended by revising the section heading to read as follows:

§ 303–70.403 When a family member, residing with the employee, dies while in transit to or from the employee's duty station outside CONUS, must we furnish mortuary services and/or transportation of the remains?

* * * * *

4. Part 303–70 is amended by adding Subpart G to read as follows:

Subpart G—Escort of Remains

Sec.

303–70.600 How many persons may we authorize travel expenses for to escort the remains of a deceased employee?
303–70.601 Under what circumstances may we authorize the escort of remains?
303–70.602 What travel expenses may we authorize for the escort of remains?

Subpart G—Escort of Remains

§ 303–70.600 How many persons may we authorize travel expenses for to escort the remains of a deceased employee?

Travel expenses may be authorized for no more than two persons.

§ 303–70.601 Under what circumstances may we authorize the escort of remains?

Escort of remains may be authorized when the employee's death occurs:

(a) While in a travel status away from his/her official station in the United States; or

(b) While performing official duties outside the United States or in transit thereto or therefrom.

§ 303–70.602 What travel expenses may we authorize for the escort of remains?

You may authorize any travel expenses in accordance with chapter 301 of this title that are necessary for the escort of remains to:

(a) The home or official station of the deceased; or

(b) Any other place appropriate for interment as determined by the head of your agency.

Dated: July 8, 1999.

David J. Barram,

Administrator of General Services.

[FR Doc. 99–21811 Filed 8–20–99; 8:45 am]

BILLING CODE 6820–34–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 101

[FCC 99–179—ET Docket No. 95–183]

37.0–38.6 GHz and 38.6–40.0 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: The Commission concludes that licensing the 39 GHz band by Economic Areas (EAs), rather than Basic Trading Areas (BTAs), will provide ample population coverage and allow licensees the flexibility to provide many different types of services. This action was taken upon the Commission's own motion after consideration of Rand McNally's copyright interest in BTAs and the possible delays that this might cause to the 39 GHz licensing process. The Commission also concludes that it is in the public interest to allow licensees to partition along any licensee-defined service area. This action was taken in response to a petition for reconsideration of the Commission's earlier action in this proceeding allowing partitioning according to county boundaries or geo-political subdivisions. Finally, the Commission decides to exempt 39 GHz licensees from a build-out requirement of mandatory operation with 18 months from the initial date of grant. This action was taken because there is a new performance requirement of a substantial service showing for 39 GHz licensees. These amended rules will provide 39 GHz licensees with more flexibility in the use of their licenses.

DATES: Effective October 22, 1999. Written comments by the public on the proposed information collection are due October 22, 1999. Written comments must be submitted to the Office of Management and Budget on the proposed information collection on or before October 22, 1999.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, S.W., Room 4–C207, Washington, DC 20554. A copy of any comments on the information collection contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street, S.W., Room 1–C804, Washington, DC 20554 or via the Internet to jboley@fcc.gov; and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 Seventeenth Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Jennifer Burton, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch, (202) 418–0680. *TTY:* (202) 418–7233. For further information concerning the information collection contained in the *Memorandum Opinion and Order*, contact Judy Boley at (202) 418–0215 or via the Internet to jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order (MO&O)*, ET Docket No. 95–183, FCC 99–179, adopted July 14, 1999, and released on July 29, 1999. This *Memorandum Opinion and Order* reaffirms the Commission's decision to dismiss, without prejudice, the following applications: (1) all pending mutually exclusive 39 GHz applications where mutual exclusivity was not resolved by December 15, 1995; (2) all major modification applications and amendments filed on or after November 13, 1995; and (3) all amendments to resolve mutual exclusivity filed on or after December 15, 1995. It also states that the Commission will process all 39 GHz applications that were not mutually exclusive with previously filed applications as of December 15, 1995, that conform in all aspects to our rules and all associated amendments of right filed before December 15, 1995, where such applications have satisfied the 30-day public notice requirement, even if they have not been subject to the full 60-day window during which competing mutually exclusive applications may be filed. The Commission will dismiss, without prejudice, all 39 GHz applications that did not meet the 30-day public notice requirement as of November 13, 1995. This conforms with section 101.37(c) of the Commission's Rules, which states

that the Commission may process an application no earlier than 30 days after it has been placed on public notice. In this *Memorandum Opinion and Order,* the Commission reconsiders the service area definitions for the 39 GHz band and decides to license all channel blocks in the 39 GHz band using Economic Areas (EAs). The use of EAs will provide ample population coverage and allow licensees the flexibility to provide many different types of services. The Commission states that it will retain the channelization plan set forth earlier in this proceeding. The current allocation for the 39 GHz segment of the band contains both fixed and satellite services. The Commission also states that consistent with the new Part 1 rules governing applications for license renewal provided in section 1.949 of the Commission's Rules, 39 GHz licensees seeking renewal of station authorizations must file applications no later than the expiration date of the authorization for which renewal is sought, and no sooner than 90 days prior to the date of license expiration. The Commission reiterates that various types of antennas may be used in the 39 GHz band because Category A directional antenna may be too restrictive to fulfill the requirements of diverse system configurations in the 39 GHz band. It clarifies that Category A and B radiation pattern requirements do not apply to wide-beam antennas, such as omni-directional and sectored antennas. The Commission decides that it is in the public interest to retain the interim rule that (1) neighboring co-channel and adjacent channel licensees must coordinate within 16 kilometers of an adjacent service area boundary, and (2) licensees that receive coordination notifications must respond within ten days. It will amend section 101.56(a)(1) of the Commission's Rules to allow licensees to partition along any licensee defined service area. The Commission decided that allowing partitioning according to county boundaries or geo-political subdivisions was too restrictive. In this *Memorandum Opinion and Order,* the Commission also states that consistent with the Part 1 competitive bidding provision contained in section 1.2111(e) of the Commission's Rules, unjust enrichment payments for 39 GHz licensees that obtain a bidding credit at auction, and subsequently partition or disaggregate to an entity that would not have qualified for such a credit, will be calculated on a *pro rata* basis, using population to determine the relative value of the partitioned area, the amount of spectrum disaggregated to determine the relative value of the disaggregated spectrum, and some combination thereof for combined partitioning and disaggregation. Finally, the Commission dismisses as moot the Emergency Request for Stay that was filed in connection with one of the petitions for reconsideration. The complete text of this *Memorandum Opinion and Order* may be purchased from the Commission's copy contractor, International Transcription Services, 1231 20th Street, N.W., Washington, DC 20036, telephone (202) 857–3800, facsimile (202) 857–3805. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–0260, TTY (202) 418–2555, or at mcontee@fcc.gov. The full text of the *Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, S.W., Room CY-A257, Washington, D.C. 20554. The full text of the *Memorandum Opinion and Order* can also be downloaded at: http://www.fcc.gov/Bureaus/Wireless/Orders/1999/fcc99138.txt or http://www.fcc.gov/Bureaus/Wireless/Orders/1999/fcc99138.wp.

Paperwork Reduction Act Analysis

This *Memorandum Opinion and Order* contains either a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collections contained in this *Memorandum Opinion and Order* as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due 60 days from date of publication of this *Memorandum Opinion and Order* in the **Federal Register**. Comments should address: (a) whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0690.

Title: Rules regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands.

Form No.: Forms 415/415T.

Type of Review: Revision of currently approved collection.

Respondents: Businesses.

Number of Respondents: 5000.

Estimated time per response: 15.125.

Total annual burden: 75,625.

Total annual cost: 5,000,000.

Needs and Uses: The collection of information is necessary because of the amendments of the Commission's Rules regarding the 37.0–38.6 GHz and 38.6–40.0 GHz bands in ET Dck No. 95–183. The rules implement use of a channeling plan, and licensing and technical rules for fixed point-to-point microwave operations in these bands, while also modifying the rules to make the technical rules consistent in both bands. The information is used by the Commission staff to provide adequate point-to-point microwave spectrum, which will facilitate provision of communications infrastructure for commercial and private mobile radio operation and competitive wireless local telephone service. Without this information, the Commission would not be able to carry out its statutory responsibilities.

List of Subjects in 47 CFR Parts 1 and 101

Radio, communications equipment.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Parts 1 and 101 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended: 47 U.S.C. Sections 154, 303: Implement, 5 U.S.C. Sections 552 and 21 U.S.C. 853a, unless otherwise noted.

PART 101—FIXED MICROWAVE SERVICES

2. The authority citation for Part 101 continues to read as follows:

Authority: Sec. 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154 and 303, unless otherwise noted.

3. § 101.17 is amended by revising paragraph (a) to read as follows:

§ 101.17 Performance requirements for the 38.6–40.0 GHz frequency band.

(a) All 38.6–40.0 GHz band licensees must demonstrate substantial service at the time of license renewal. A licensee's substantial service showing should

include, but not be limited to, the following information for each channel for which they hold a license, in each EA or portion of an EA covered by their license, in order to qualify for renewal of that license. The information provided will be judged by the Commission to determine whether the licensee is providing service which rises to the level of ''substantial.''

* * * * *

4. § 101.56 is amended by revising paragraphs (a)(1), (b), (d), (f), (g), (h), and (i) to read as follows:

§ 101.56 Partitioned Services Areas (PSAs) and Disaggregated Spectrum

(a)(1) The holder of an EA authorization to provide service pursuant to the competitive bidding process and any incumbent licensee of rectangular service areas in the 38.6–40.0 GHz band may enter into agreements with eligible parties to partition any portion of its service area as defined by the partitioner and partitionee. Alternatively, licensees may enter into agreements or contracts to disaggregate any portion of spectrum, provided acquired spectrum is disaggregated according to frequency pairs.

* * * * *

(b) The eligibility requirements applicable to EA authorization holders also apply to those individuals and entities seeking partitioned or disaggregated spectrum authorizations.

* * * * *

(d)(1) When any area within an EA becomes a partitioned service area, the remaining counties and geopolitical subdivision within that EA will be subsequently treated and classified as a partitioned service area.

(2) At the time an EA is partitioned, the Commission shall cancel the EA authorization initially issued and issue a partitioned service area authorization to the former EA authorization holder.

* * * * *

(f) The duties and responsibilities imposed upon EA authorization holders in this part, apply to those licensees obtaining authorizations by partitioning or spectrum disaggregation.

(g) The build-out requirements for the partitioned service area or disaggregated spectrum shall be the same as applied to the EA authorization holder.

(h) The license term for the partitioned service area or disaggregated spectrum shall be the remainder of the period that would apply to the EA authorization holder.

(i) Licensees, except those using bidding credits in a competitive bidding procedure, shall have the authority to partition service areas or disaggregate spectrum.

5. § 101.63 is amended by revising paragraph (a) to read as follows:

§ 101.63 Period of construction; certification of completion of construction

(a) Each Station, except in Local Multipoint Distribution Services and the 38.6–40.0 GHz band, authorized under this part must be in operation within 18 months from the initial date of grant.

* * * * *

6. § 101.64 is revised to read as follows:

§ 101.64 Service areas.

Service areas for 38.6–40.0 GHz service are Economic Areas (EAs) as defined below. EAs are delineated by the Regional Economic Analysis Division, Bureau of Economic Analysis, U.S. Department of Commerce. The Commerce Department organizes the 50 States and the District of Columbia into 172 EAs. Additionally, there are four EA-like areas: Guam and Northern Mariana Islands; Puerto Rico and the U.S. Virgin Islands; American Samoa and the Gulf of Mexico. A total of 175 authorizations (excluding the Gulf of Mexico EA-like area) will be issued for each channel block in the 39 GHz band.

* * * * *

7. § 101.103 is amended by revising paragraph (i)(1) to read as follows:

§ 101.103 Frequency coordination procedures.

* * * * *

(i)(1) When the licensed facilities are to be operated in the band 38,600 MHz to 40,000 MHz and the facilities are located within 16 kilometers of the boundaries of an Economic Area, each licensee must complete the frequency coordination process of subsection 101.103(d) with respect to neighboring EA licensees and existing licensees within its EA service area that may be affected by its operation prior to initiating service. In addition to the technical parameters listed in subsection 101.103(d), the coordinating licensee must also provide potentially affected parties technical information related to its subchannelization plan and system geometry.

* * * * *

8. § 101.147 is amended by revising paragraph (u)(2) to read as follows:

§ 101.147 Frequency assignments.

* * * * *

(u)(2) Applications filed pursuant to Section 101.1206 shall identify any pre-existing rectangular service area authorizations that are located within, or are overlapping with, the EA for which the license is sought, and the provisions of Section 101.103 shall apply for purposes of frequency coordination between any authorized rectangular service area(s) and EA service area(s) that are geographically adjoining and overlapping.

* * * * *

[FR Doc. 99–21765 Filed 8–20–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–175]

Television Broadcasting Services, Digital Television Broadcasting Services; Buffalo, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a petition filed by Western New York Public Broadcasting Association, licensee of Stations WNED–TV, Channel 17, and WNEQ–TV, Channel *23, Buffalo, New York, and amends the Table of Allotments of Television Broadcast Stations, to reflect Channel *17 as reserved for non-commercial educational use, and Channel 23 as nonreserved. *See* 63 FR 53009 (October 2, 1998). Comments in opposition filed by Grant Television, Inc, WKBW–TV Licensee, Inc., Kevin Smardz, and Coalition for Noncommercial Media are denied. The Table of Allotments of Digital Broadcast Stations for Buffalo is also amended to delete the asterisk for Digital TV Channel *32.

DATES: Effective September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2130.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No.98–175, adopted July 19, 1999, and released on July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Allotments, Television Broadcast Stations, under Buffalo, New York, is amended by placing an asterisk on Channel 17 and removing an asterisk from Channel *23.

§ 73.622 [Amended]

3. Section 73.622(b), the Table of Allotments, Digital Broadcast Television Stations, under Buffalo, New York, is amended by removing the asterisk from Channel *32.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–21766 Filed 8–20–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

48 CFR Parts 413 and 453

[AGAR Case 96–05]

RIN 0599–AA04

Agriculture Acquisition Regulation; Simplified Acquisition Procedures

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Direct final rule.

SUMMARY: The Department of Agriculture (USDA) is amending the Agriculture Acquisition Regulation (AGAR) to reorganize part 413, Simplified Acquisition Procedures. USDA is reorganizing part 413 to reflect the reorganization of part 13, Simplified Acquisition Procedures, of the Federal Acquisition Regulation (FAR). This amendment changes the structure, but not the substance, of AGAR part 413.

DATES: This rule is effective October 22, 1999 without further action, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before September 22, 1999. If we receive adverse comments, the Office of Procurement and Property Management will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Please submit any adverse comments, or a notice of intent to submit adverse comments, in writing to U.S. Department of Agriculture, Office of Procurement and Property Management, Procurement Policy Division, Stop 9303, 1400 Independence Avenue SW, Washington, DC 20250–9303.

FOR FURTHER INFORMATION CONTACT: Joseph J. Daragan, (202) 720–5729.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Executive Order Nos. 12866 and 12988
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. Small Business Regulatory Enforcement Fairness Act
III. Electronic Access Addresses

I. Background

The AGAR implements the FAR (48 CFR chapter 1) where further implementation is needed, and supplements the FAR when coverage is needed for subject matter not covered by the FAR. USDA is amending the AGAR to reflect the reorganization of FAR Part 13, Simplified Acquisition Procedures (62 FR 64916, December 9, 1997). In this rulemaking document, USDA is amending the AGAR as a direct final rule, since the changes are non-controversial and unlikely to generate adverse comment. The changes are clerical in nature, and do not affect the public.

Rules that an agency believes are noncontroversial and unlikely to result in adverse comment may be published in the **Federal Register** as direct final rules. The Office of Procurement and Property Management published a policy statement in the **Federal Register** (63 FR 9158, February 24, 1998) to notify the public of its intent to use direct final rulemaking in appropriate circumstances.

This rule makes the following changes to the AGAR:

(a) We are revising part 413 to match the numbering structure of FAR part 13 following its revision. We are moving all material in subparts 413.1, 413.4, and 413.5 to a new subpart 413.3, Simplified Acquisition Methods.

(b) We are moving section 413.103, Policy, to section 413.301, Governmentwide commercial purchase card. We are not changing the substance of section 413.103. The new section corresponds to revised FAR section 13.301, Governmentwide commercial purchase card.

(c) We are removing the material in subpart 413.4, Imprest Fund. This subpart referred users to USDA's Departmental Regulations for additional guidance on the use of imprest funds and third party drafts. USDA is minimizing the use of imprest funds, and no longer uses third party drafts for acquisition or payment. We determined that the material in subpart 413.4 was no longer necessary.

(d) We are moving the material in section 413.505, Purchase Order and related forms, to section 413.306, SF 44, Purchase Order-Invoice-Voucher, and section 413.307, Forms. We are not changing the substance of section 413.505. The new sections correspond to revised FAR sections 13.306, Purchase Order-Invoice-Voucher, and 13.307, Forms.

(e) We are amending section 453.213 to update a reference in that section. We are changing the reference to section 413.505–1 to read 413.307.

II. Procedural Requirements

A. Executive Order Nos. 12866 and 12988

USDA prepared a work plan for this regulation and submitted it to the Office of Management and Budget (OMB) pursuant to Executive Order No. 12866. OMB determined that the rule was not significant for the purposes of Executive Order No. 12866. Therefore, the rule has not been reviewed by OMB. USDA has reviewed this rule in accordance with Executive Order No. 12988, Civil Justice Reform. The proposed rule meets the applicable standards in section 3 of Executive Order No. 12988.

B. Regulatory Flexibility Act

USDA reviewed this rule under the Regulatory Flexibility Act, 5 U.S.C. 601–611, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. The reorganization of AGAR part 413 does not affect the way in which USDA conducts its acquisitions or otherwise interacts with the public. USDA certifies that this rule will not have a significant economic effect on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed on the public by this rule. Accordingly no OMB clearance is required by section 350(h) of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulation at 5 CFR Part 1320.

D. Small Business Regulatory Enforcement Fairness Act

This rule has been submitted to each House of Congress and the Comptroller General in accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq.*

III. Electronic Access Addresses

You may send electronic mail (E-mail) to JDARAGAN@USDA.GOV, or contact us via fax at (202) 720–8972, if you would like additional information about this rule, or if you wish to submit comments.

List of Subjects in 48 CFR Parts 413 and 453

Government contracts, Government procurement.

For the reasons set out in the preamble, the Office of Procurement and Property Management amends 48 CFR Chapter 4 as set forth below:

1. Revise Part 413 to read as follows:

PART 413—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 413.3—Simplified Acquisition Methods

Sec.

413.301 Governmentwide commercial purchase card.
413.306 SF 44, Purchase Order-Invoice-Voucher.
413.307 Forms.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 413.3—Simplified Acquisition Methods

413.301 Governmentwide commercial purchase card.

USDA policy and procedures on use of the Governmentwide commercial purchase card are established in Departmental Regulation Series 5000.

413.306 SF 44, Purchase Order-Invoice-Voucher.

The Standard Form 44 (and the previously prescribed USDA Form AD–744) is not authorized for use within USDA.

413.307 Forms.

Form AD–838, Purchase Order, is prescribed for use by USDA in lieu of Optional Forms 347 and 348.

2. The authority citation for part 453 continues to read as follows:

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

453.213 [Amended]

3. In section 453.213, remove ''413.505–1'' and add, in its place,''413.307''.

Done at Washington, DC, this 12th day of August, 1999.

W.R. Ashworth,

Director, Office of Procurement and Property Management.

[FR Doc. 99–21743 Filed 8–20–99; 8:45 am]

BILLING CODE 3410–XE–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[DOT Docket No. NHTSA–99–6010]

RIN 2127–AH18

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Motor Vehicle Safety Standard on lamps, reflective devices, and associated equipment includes a provision regulating headlamp concealment devices. In this document, NHTSA amends that Standard so that manufacturers of motor vehicles with headlamp concealment devices may choose between complying with that existing provision, or with a new provision incorporating by reference the United Nations Economic Commission for Europe's standard (ECE standard) on those devices.

This rulemaking was initiated in response to a petition from the domestic and foreign motor vehicle industry. Our notice of proposed rulemaking was based on our tentative conclusion, after reviewing the U.S. and UN/ECE requirements, that the UN/ECE requirements were essentially identical to the U.S. requirements and thus would yield at least as much safety benefit as the U.S. requirements. Since NHTSA did not receive any response to its request for public comments, the agency reaffirms that conclusion and adopts the proposed amendment as final.

DATES: Effective date. This rule is effective October 22, 1999. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of October 22, 1999.

Early compliance date. You have the option of early compliance with the changes made in this final rule beginning August 23, 1999.

Petitions for reconsideration deadline. If you wish to petition for reconsideration of this final rule, you must submit it so that we (NHTSA) receive your petition not later than October 7, 1999.

ADDRESSES: In your petition for reconsideration, you should refer to the docket number for this action (cited in the heading of this final rule) and submit the petition to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: You may contact the following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

For technical issues: Mr. Patrick Boyd, Office of Crash Avoidance. Mr. Boyd's telephone number is: (202) 366–6346, and his FAX number is (202) 493–2739.

For legal issues: Ms. Dorothy Nakama, Office of the Chief Counsel. Ms. Nakama's telephone number is (202) 366–2992, and her FAX number is (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Background

The United States is a party to several international agreements, including the General Agreement on Tariffs and Trade. That agreement was most recently amended by the Uruguay Round Agreements. One of those agreements is the Agreement on Technical Barriers to Trade (TBT). The TBT Agreement seeks to avoid the creation of unnecessary obstacles to trade, while recognizing the right of signatory countries to establish and maintain technical regulations for the protection of human, animal and plant life and health and the environment.

Among other things, the TBT Agreement also provides that a party to the Agreement will consider accepting as equivalent the technical regulations of other party nations, provided they adequately fulfill the objectives of the party's existing domestic standards. On May 13, 1998, the National Highway Traffic Safety Administration (NHTSA) amended 49 CFR part 553, *Rulemaking Procedures*, by adding a new appendix B setting forth a statement of policy about an agency process for making tentative findings that the vehicle safety standards of other countries are functionally equivalent to the corresponding Federal Motor Vehicle Safety Standards (FMVSSs) (63 FR 26508).

In a submission dated August 13, 1997, the American Automobile Manufacturers Association (AAMA) and the Association of International Automobile Manufacturers, Inc. (AIAM), petitioned the agency to amend several FMVSSs to permit vehicle manufacturers to choose to comply with either the existing provisions of those FMVSSs or new provisions incorporating by reference the requirements of counterpart vehicle safety standards recognized in most European countries. These European standards take the form of European Union directives and are usually taken from a body of standards developed by the United Nations Economic Commission for Europe (UN/ECE).

The first test used by NHTSA under appendix B of part 553 to determine functional equivalence is whether the foreign requirements, test conditions, and test procedures appear to be the same or similar to the U.S. ones, with any differences being minor and lacking in safety consequences. In its review, NHTSA tentatively concluded that the European requirements for headlamp concealment devices passed this test. The fundamental performance requirements of the U.S. and European standards are the same. Further, NHTSA tentatively concluded that the differences between the standards are minor and inconsequential to safety except for vehicles equipped with headlamps for which external aimers must be used to aim them properly. These issues are further discussed below.

Fundamental Performance Requirements and Inconsequential Differences

Standard No. 108, *Lamps, reflective devices, and associated equipment,* and ECE R.48.01 are alike in all important respects. Standard No. 108, at S12., Headlamp Concealment Devices, specifies requirements for vehicles equipped with headlamp concealment devices. It requires that there be a single switch whose operation, in normal circumstances, causes both the headlamps to illuminate and the headlamp concealment device to fully open in not more than 3 seconds, at any temperature within a range of −30 to +50 degrees Celsius. In ECE R.48.01, Paragraphs 5.14.3 and 5.14.5 set forth the same requirements.

Standard No. 108 also requires certain failsafe performance of headlamp concealment devices. In the event of a loss of power to a headlamp concealment device while the headlamp is illuminated, the headlamp must stay in the fully open position. Also, in the event of a malfunction of a component that controls or conducts power for the actuation of the concealment device, it must be possible to open the concealment device without the use of tools and have it stay fully open until intentionally closed. Paragraph 5.14.2 of ECE R.48.01 requires the same fail-safe performance.

In its review of Standard No. 108 and the ECE Standard, the agency noted several differences between the two standards. First, Standard No. 108 requires that a headlamp concealment device be installed so that the headlamp may be mounted, aimed and adjusted without removing any component of the device, other than components of the headlamp assembly. There is no comparable provision in the ECE standard. This requirement in Standard No. 108 addresses a potential aiming problem that could affect safety. Unless properly designed, a headlamp concealment device could potentially interfere with the use of external aimers. These devices, which are used to aim some kinds of U.S. headlamps, attach to the outside of the headlamp lens. If such interference occurred and if the component were removed to allow aiming, and then were replaced, the accuracy of the aim could be adversely affected. Alternatively, efforts to aim the headlamps without removing the interfering components could result in improper shortcuts in aiming. To address this difference between the two standards, NHTSA is limiting the applicability of its finding of functional equivalence to headlamps that do not use external aimers.

Second, NHTSA noted that the ECE standard does not have a phrase analogous to Standard No. 108's S12.3 and S12.5 ''except for malfunctions covered by S12.2,'' that make it expressly clear S12.3 and S12.5 apply only to functioning systems. NHTSA concluded that the ECE standard was intended to apply to functioning systems only and that the ECE standard alternative should be so interpreted. The alternative would not require systems with a failure mode to comply with performance requirements in addition to the failsafe performance requirements.

Third, NHTSA noted several ECE standard provisions that have no parallel in S12 of Standard No. 108. However, compliance with those provisions does not affect compliance with S12. Consequently, there is no impediment to a finding of functional equivalence.

Notice of Proposed Rulemaking

In a notice of proposed rulemaking published on October 28, 1998 (63 FR 57638), NHTSA proposed to amend Standard No. 108 so that manufacturers of motor vehicles with headlamp concealment devices would have a choice between complying with existing provisions in Standard No. 108 or meeting a new provision incorporating by reference the United Nations Economic Commission for Europe's standard (ECE standard) on headlamp concealment devices. In the NPRM, NHTSA discussed its review of the ECE standard under appendix B of 49 CFR part 553, and addressed the following issues:

ECE Standard Meets Part 553, Appendix B Test

NHTSA tentatively concluded that paragraph 5.14 of ECE R.48.01 meets the test in 49 CFR Part 553 Appendix B and accordingly proposed to amend Standard No. 108 to permit manufacturers of motor vehicles with headlamp concealment devices to choose between complying with S12.1 through S12.5 of Standard No. 108, or with a new provision (S12.6 of Standard No. 108) incorporating by reference paragraph 5.14 of ECE R. 48.01. NHTSA proposed to limit optional compliance with the ECE standard to vehicles using either a new U.S. alternative beam pattern which allows European-style visual/optical aim or a headlamp with a built-in aimer (VHAD) that eliminates the need for external aimers. NHTSA stated its belief that there is no safety consequence to the lack of a provision in paragraph 5.14 addressing the interference problem that may be associated with the use of external aimers.

Vehicle Manufacturer's Certification

NHTSA noted that, when a safety standard provides manufacturers with more than one compliance option, the agency needs to know which option has been selected in order to conduct a compliance test. Moreover, based on previous experience with enforcing standards that include compliance options, the agency stated it was aware that a manufacturer confronted with an apparent noncompliance for the option it has selected (based on a compliance test) may respond by arguing that its vehicles comply with a different option for which the agency has not conducted a compliance test. This shift in a manufacturer's stance creates obvious difficulties for the agency in managing its available resources for carrying out its enforcement responsibilities, e.g., the possible need to conduct multiple compliance tests, first for one compliance option, then for another, to

determine whether there is a noncompliance.

Accordingly, NHTSA proposed that prior to or at the time a manufacturer certifies that a vehicle with headlamp concealment devices meets all applicable FMVSSs (pursuant to 49 CFR part 567, *Certification*), the manufacturer must decide whether it is certifying that vehicle as meeting S12.1 through S12.5 or the ECE standard (that would be established in S12.6). NHTSA further proposed that the selected alternative need not be stated on the certification label. However, the manufacturer must advise the agency of its selection when asked by the agency to do so. The manufacturer's decision would be irrevocable.

NHTSA's Choice of European Standard to Reference

Most of the harmonized standards among the countries of the European Union (EU) were developed as ECE regulations and later adopted as EU directives. Consequently, the same standards are known under both ECE regulation numbers and EU directive numbers. The petitioner asked that both the ECE and EU numbers for the identical technical requirements be cited as alternatives to the requirements of Standard No. 108. However, NHTSA proposed that only one reference to the European standard be cited to avoid confusion and to reduce the potential need for amendments to updated versions of European standards. NHTSA must reference only one European standard (and make that standard publicly available) to meet the **Federal Register's** procedures for incorporating documents by reference.

NHTSA stated its intent to cite the ECE regulation when possible because the ECE is a body in which the U.S. participates, and also its regulations may be adopted by countries outside of the European Union as well. The agency understands that it will not always be possible to cite an ECE standard because some EU directives with possible potential for being treated as functionally equivalent alternatives to Federal motor vehicle safety standards have no ECE counterpart.

Proposed Leadtime

NHTSA proposed that, if made final, the changes would take effect 60 days after the publication of the final rule, with manufacturers given the option to comply with (and certify to) the ECE standard for headlamp concealment devices, immediately.

Final Rule

NHTSA did not receive any comments on its proposal. Accordingly, the agency adopts its proposal as set forth in the NPRM. NHTSA concludes that paragraph 5.14 of ECE R.48.01 meets the test established in 49 CFR part 553 appendix B for determining functional equivalence; i.e., that the agency's analysis of paragraph 5.14 indicates that its requirements are the same or similar to the requirements of S12.1 through S12.5 of Standard No. 108. The differences are minor and lacking in safety consequences for vehicles equipped with headlamps for which external aimers must be used to aim them properly. Accordingly, NHTSA restricts the option of complying with the ECE regulation to manufacturers of vehicles using either a new U.S. alternative beam pattern which allows European-style visual/optical aim or a headlamp with a built-in aimer (VHAD) that eliminates the need for external aimers.

The final rule requires that, not later than the time when a manufacturer certifies that a vehicle with headlamp concealment devices meets all applicable FMVSSs (pursuant to 49 CFR part 567, *Certification*), the manufacturer must decide whether the basis for its certification is that the vehicle meets S12.1 through S12.5 of Standard No. 108 or S12.6 (incorporating the ECE regulation). Although the selected alternative need not be stated on the certification label, the manufacturer must advise the agency of its selection when asked by the agency to do so. The manufacturer's decision is irrevocable.

Before issuing this final rule, NHTSA obtained the latest version of the ECE regulation directly from the ECE rather than relying on the petitioners' version (the version proposed in the NPRM). The version provided by the ECE is identical to the petitioner's version except that a typographical error in Paragraph 5.15.5 (found in the petitioner's version) does not appear in the version NHTSA received from the ECE. Accordingly, in the final rule, the citation of ECE R48 proposed for S12.6 (of Standard No. 108) is updated to E/ECE/324—E/ECE/TRAN/505, Rev. 1/Add.47/Rev.1/Corr.2, 26 February 1996.

Regulatory Impacts

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E. O. 12866, ''Regulatory Planning and Review.'' We have determined that this action is not ''significant'' under DOT's regulatory policies and procedures. This final rule has no substantive effect on manufacturers of motor vehicles that have headlamp concealment devices. The ECE standard on headlamp concealment devices that is included in the Federal motor vehicle safety standards does not differ substantively from existing requirements. Vehicle manufacturers will not incur additional costs as a result of meeting any new requirements. The impacts of this action are so minor that a full regulatory evaluation for this final rule has not been prepared.

B. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–112, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in our regulatory activities unless doing so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

NHTSA is not aware of a standard established by the SAE or other private organization that would apply to the same aspect of performance as the headlamp concealment lamp provisions of Standard No. 108. ECE Regulation 48 is not a voluntary consensus standard.

C. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The following is NHTSA's statement providing the factual basis for the certification. (5 U.S.C. 605(b)).

The final rule affects passenger car, light truck, and multipurpose passenger vehicle manufacturers that have headlamp concealment devices on the vehicles they manufacture. The Small Business Administration's size standards (13 CFR part 121) are organized according to Standard

Industrial Classification Codes (SIC). SIC Code 3711 ''Motor Vehicles and Passenger Car Bodies'' has a small business size standard of 1,000 employees or fewer.

The final rule applies to the previously described vehicle manufacturers, regardless of their volume of production. There is no significant economic impact on any vehicle manufacturer because no manufacturer is required to provide headlamp concealment devices. There is no economic impact on manufacturers that already provide the devices because the devices meet the existing headlamp concealment device requirements in Standard No. 108, and NHTSA concludes that the ECE standard does not differ substantively from that Standard. The final rule permits vehicle manufacturers to choose between certifying that the vehicle with a headlamp concealment device meets the previously existing requirements in the Standard or the ECE standard now incorporated in the Standard. NHTSA does not believe there will be a cost advantage to certifying to one set of requirements over the other.

D. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this final rule and determined that the rule does not have a significant impact on the quality of the human environment.

E. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

F. Civil Justice Reform

This final rule does not have a retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. 49 U.S.C. 301651 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings is not required before parties may file suit in court.

G. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this final rule does not have a $100 million effect, no Unfunded Mandates assessment has been prepared.

H. Economically Significant Effects on Children

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

This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866. Further, nothing in the final rule establishes an environmental, health, or safety risk that NHTSA believes may have a disproportionate effect on children.

I. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule does not establish any collection of information requirements.

J. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the Federal Motor Vehicle Safety Standards (49 CFR part 571), are amended as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.5 is amended by adding paragraph (b)(9) to read as follows:

§ 571.5 Matter incorporated by reference.

* * * * *

(b) * * *

(9) *Regulations of the United Nations Economic Commission for Europe (ECE).* They are published by the United Nations. Information and copies may be obtained by writing to: United Nations, Conference Services Division, Distribution and Sales Section, Office C.115–1, Palais des Nations, CH–1211, Geneva 10, Switzerland. Copies of Regulations also are available on the ECE internet web site: *www.unece.org/trans/main/wp29/wp29regs.html.*

* * * * *

3. Section 571.108 is amended by adding S12.6 and S12.7 to read as follows:

§ 571.108 Standard No. 108, Lamps, reflective devices, and associated equipment.

* * * * *

S12.6 As an alternative to complying with the requirements of S12.1 through S12.5, a vehicle with headlamps incorporating VHAD or visual/optical aiming in accordance with paragraph S7 may meet the requirements for *Concealable lamps* in paragraph 5.14 of the following version of the Economic Commission for Europe Regulation 48 ''Uniform Provisions Concerning the Approval of Vehicles With Regard to the Installation of Lighting and Light-Signalling Devices'': E/ECE/324–E/ECE/TRANS/505, Rev.1/Add.47/Rev.1/Corr.2, 26 February 1996 (page 17), in the English language version. A copy of paragraph 5.14 may be reviewed at the DOT Docket Management Facility, U.S. Department of Transportation, Room PL–01, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Copies of E/ECE/324–E/ECE/TRANS/505, Rev.1/Add.47/Rev.1/Corr.2, 26 February 1996 may be obtained from the ECE internet site:

www.unece.org/trans/main/wp29/wp29regs.html or by writing to:

United Nations, Conference Services Division, Distribution and Sales Section, Office C.115–1, Palais des Nations, CH–1211, Geneva 10, Switzerland.

S12.7 Manufacturers of vehicles with headlamps incorporating VHAD or visual/optical aiming shall elect to certify to S12.1 through S12.5 or to S12.6 prior to, or at the time of certification of the vehicle, pursuant to 49 CFR part 567. The selection is irrevocable.

Issued on: July 21, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–21682 Filed 8–20–99; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 64, No. 162
Monday, August 23, 1999

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 Parts 30, 40, 50, and 70

[Docket No. PRM–50–65]

Nuclear Information and Resource Service; Petition for Rulemaking Denial

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–50–65) from the Nuclear Information and Resource Service (NIRS). The petitioner requested that NRC amend its regulations to require the shutdown of nuclear facilities that are not compliant with date-sensitive, computer-related issues regarding the Year 2000 (Y2K) issue. The petitioner requested that NRC take this action to ensure that Y2K issues will not cause the failure of nuclear safety systems and thereby pose a threat to public health and safety. NRC is denying the petition because the Commission has determined that the actions taken by licensees to implement a systematic and structured facility-specific Y2K readiness program and NRC's oversight of the licensees' implementation of these Y2K readiness programs provide reasonable assurance of adequate protection to public health and safety.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and NRC's letters to the petitioners are available for public inspection or copying in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC, as well as on NRC's rulemaking website at http://ruleforum.llnl.gov.

FOR FURTHER INFORMATION CONTACT: Matthew Chiramal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–2845, E-mail address <mxc@nrc.gov>, or Gary W. Purdy, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–7897, E-mail address <gwp1@nrc.gov>.

SUPPLEMENTARY INFORMATION:

Background

NRC received three related petitions for rulemaking (PRM–50–65, PRM–50–66, and PRM–50–67), each dated December 10, 1998, submitted by NIRS concerning various aspects of Y2K issues and nuclear safety. This petition (PRM–50–65) requested that NRC adopt regulations that would require facilities licensed by NRC under 10 CFR Parts 30, 40, 50, and 70 to be Y2K compliant. The second petition (PRM–50–66) requested that NRC adopt regulations that would require facilities licensed by NRC under 10 CFR Part 50 to develop and implement adequate contingency and emergency plans to address potential system failures. The third petition (PRM–50–67) requested that NRC adopt regulations that would require facilities licensed by NRC under 10 CFR Parts 50 and 70 to provide reliable sources of back-up power. Because of the nature of these petitions and the date-specific issues they address, the petitioner requested that the petitions be addressed on an expedited schedule.

On January 25, 1999, NRC published a notice of receipt of a petition for rulemaking in the **Federal Register** (64 FR 3789). It was available on NRC's rulemaking website and in the NRC Public Document Room. The notice of receipt of a petition for rulemaking invited interested persons to submit comments by February 24, 1999.

The Petition

The petitioner requested that NRC adopt the following text as a rule:

> Any and all facilities licensed by the Nuclear Regulatory Commission under 10 CFR Parts 30, 40, 50, and 70 shall be closed by 12 pm Eastern Standard Time, December 1, 1999, unless and until each facility has: (a) fully and comprehensively examined all computer systems, embedded chips, and other electronic equipment that may be date-sensitive to ensure that all such systems that may be relevant to safety are Y2K compliant; (b) repaired, modified, and/or replaced all such systems that are not found to be Y2K compliant; (c) made available to the public all information related to the examination and repair, modification and/or replacement of all such systems; (d) determined, through full-scale testing, that all repairs, modifications, and/or replacements of all such systems are, in fact, Y2K compliant.

The petitioner noted that in NRC Generic Letter (GL) 98–01, ''Year 2000 Readiness of Computer Systems at Nuclear Power Plants,'' dated May 11, 1998, the NRC has recognized the potential for date-related problems that may affect a system or application (the Y2K problem). These potential problems include not representing the year properly, not recognizing leap years, and improper date calculations. These problems could result in the inability of computer systems to operate or to function properly. The petitioner stated that the Y2K problem could potentially interfere with the proper operation of computer systems, microprocessor-based hardware, and software or databases relied on at nuclear power plants. Further, the petitioner asserted that the Y2K problem could result in a plant trip and subsequent complications in tracking post-shutdown plant status and recovery as a result of a loss of emergency data collection. Additionally, the petitioner is also concerned that power grids providing offsite power to nuclear stations could be affected to the extent that localized and widespread grid failures could occur.

The petitioner acknowledged that NRC has recognized the potential safety and environmental problems that could result if date-sensitive electronic systems fail to operate or provide false information. The petitioner asserted that NRC has required its licensees of reactor and major fuel cycle facilities to report by July 1, 1999, on their programs to ensure compliance with Y2K issues. In addition, the petitioner asserted that NRC has not made explicit how it will define compliance nor what it plans to do for licensees of facilities that cannot prove compliance. In the petitioner's suggested regulatory text, NIRS defined compliance with Y2K issues as evaluation of all potential problems that may be safety-related, repair of all such problems, and full-scale testing of all solutions. The petitioner's proposed regulation would also require full public disclosure of all evaluation, repair, and testing data so that the information may be examined by independent experts and the public. Finally, the petitioner's proposed regulation would make it clear that nuclear facilities will be closed

until they can demonstrate full compliance with Y2K issues.

The petitioner concluded by stating that NRC is obligated to act decisively to protect public health and safety and the environment. NIRS stated that anything short of the suggested approach in the petition is insufficient to fulfill this obligation and that NRC should adopt the suggested regulation as soon as possible.

Public Comments on the Petition

In response to the petition, NRC received 70 comment letters, including 1 letter signed by 25 individuals from the State of Michigan, 3 letters from industry groups, 10 letters from utilities, 13 letters from private organizations, and 43 letters from private citizens.

Fifty-four letters supported the petition, 40 of which were from private citizens, 13 were from private organizations, and 1 that was signed by 25 individuals. The comments supporting the petition addressed concerns related to avoiding the occurrence of a catastrophic nuclear accident, the reasonableness of the petitioner's request, and opined that any uncertainty is too great for the nuclear industry.

Sixteen letters opposed the petition, of which 3 were from private citizens, 3 were from associated industries, and 10 were from utilities. The comments opposing the petition stated that the nuclear power industry has taken a coordinated approach to Y2K readiness, nuclear power plant licensees are implementing a structured Y2K program, NRC Y2K initiatives are underway, NRC staff is monitoring licensee activities, and current regulations and license conditions are adequate to address potential Y2K computer issues.

In some of the letters supporting the petition, the authors included the following additional comments that provide information or request action that was not contained in the petition. These comments noted:

1. The date proposed in the petition, December 1, 1999, to shut down all non-Y2K compliant nuclear power plants should be moved up 1 to 6 months before the year 2000. The reasons given were to allow sufficient time to shut down and to provide additional safety.

2. Power grid failure would not allow controlled shutdown of the plant and plants could experience problems like the Russians. The Y2K problem could increase the chance of a core melt.

3. The problem of ''embedded systems,'' microchips, microprocessors, and such systems-within-systems are difficult to identify and the effects of their multiple failures are poorly understood, especially in the U.S. power grid.

4. The audits conducted by NRC staff are too few.

These comments are addressed specifically in the discussion of ''Reasons for Denial.''

Reasons for Denial

The NRC is denying the NIRS petition because the NRC has determined that: (1) the actions taken by licensees to implement a systematic and structured facility-specific Y2K readiness program; and (2) NRC's oversight of licensees' implementation of these Y2K readiness programs together constitute an effective process for addressing Y2K issues such that there will continue to be reasonable assurance of adequate protection of public health and safety. NIRS has not presented any information (and no public comments have been received) that demonstrates that: (1) the licensees' activities are fundamentally incapable of effectively addressing Y2K issues in a timely fashion; (2) licensees are not adequately implementing the Y2K readiness programs; (3) NRC's inspection, audit, and oversight activities are fundamentally incapable of providing adequate regulatory control with respect to licensee implementation of Y2K readiness programs; and (4) the NRC is not effectively implementing its inspection, audit, and oversight activities with respect to Y2K issues. Finally, NIRS has not provided any basis why the NRC's current regulatory approach, which retains the regulatory authority to order licensees to discontinue or modify their licensed activities if the NRC finds that reasonable assurance of adequate protection to public health and safety will not be provided because of Y2K issues, will be inadequate in view of the 6-month time period between July 1, 1999, when licensees are required to inform the NRC of the status of their Y2K remediation activities and the December 31, 1999, date, when Y2K-induced problems are most likely to begin occurring.

Parts (a), (b), and (d) of the NIRS proposed rule are addressed below in Sections I, II, III, IV, and V for Part 50 operating nuclear power plants, Part 50 non-power reactors, Part 50 decommissioning nuclear power plants, major licensees under Parts 40 and 70, and Part 30 and minor Parts 40 and 70 licensees, respectively. Part (c) of NIRS' proposed rule, concerning public access to Y2K information, is addressed for all types of licensees in Section VI.

I. Part 50 Operating Nuclear Power Plant Licensees

A. Industry and NRC Activities Addressing Y2K

To alert nuclear facility licensees to the Y2K problem, NRC issued Information Notice (IN) 96–70, ''Year 2000 Effect on Computer System Software,'' on December 24, 1996. IN 96–70 described the potential problems that nuclear power plant computer systems and software may encounter as a result of the change to the new century and how the Y2K issue may affect NRC licensees. IN 96–70 encouraged licensees to examine their uses of computer systems and software well before the year 2000 and suggested that licensees consider appropriate actions for examining and evaluating their computer systems for Y2K vulnerabilities.

In 1997, the nuclear industry began to assess the Y2K challenge and work with key Federal agencies to help nuclear power plant operators prepare for continued safe operations at the start of the year 2000. In July 1997, the Nuclear Utilities Software Management Group (NUSMG), a nuclear industry working group, conducted the first industry-wide workshop on Y2K readiness.

In October 1997, the Nuclear Energy Institute (NEI) and NUSMG issued a Y2K program plan guidance document, NEI/NUSMG 97–07, ''Nuclear Utility Year 2000 Readiness,'' to all U.S. nuclear power plant licensees. This document provides a step-by-step method to identify, test, and repair potential Y2K computer problems and contains detailed procedures and checklists for resolving Y2K issues, based on the best utility practices.

NEI/NUSMG 97–07 presented a strategy for developing and implementing a nuclear utility Y2K program. The strategy recognizes management, implementation, quality assurance (QA) measures, regulatory considerations, and documentation as the fundamental elements of a successful Y2K project. The document contains examples currently in use by licensees and also recommends that the Y2K program be administered using standard project management techniques. The recommended components for management planning are management awareness, sponsorship, project leadership, project objectives, the project management team, the management plan, project reports, interfaces, resources, oversight, and QA. The suggested phases of implementation are awareness, initial assessment (which includes inventory, categorization, classification,

prioritization, and analysis of initial assessment), detailed assessment (including vendor evaluation, utility-owned or utility-supported software evaluation, interface evaluation, and remedial planning), remediation, Y2K testing and validation, and notification.

Y2K testing is used both as an investigative tool to examine systems and components to identify Y2K problems and as a validation tool to confirm that the corrective actions have eliminated the Y2K problem. Y2K testing in support of evaluation efforts to determine whether a Y2K problem is present is performed during detailed assessments. Systems and components will then be repaired or replaced in a process known as ''remediation.'' Y2K testing subsequent to remediation is performed to determine whether the remediation efforts have eliminated the Y2K problem and no unintended functions are introduced. Y2K testing may be performed at several levels:

- Unit testing, which focuses on functional and compliance testing of a single application or software module;
- Integration testing, which tests the integration of related software modules and applications; and
- System testing, which tests the hardware and software components of a system.

For systems, components, and equipment classified as safety-related or critical to operations, the Y2K remediation activities include Y2K testing. On one end of the spectrum, there are the stand-alone, date-aware, microprocessor-based components that do not communicate digital information to any other devices. Properly performed bench testing of these devices, by the licensee or the vendor, coupled with software/firmware revision-level verification of the field devices as required, is adequate to establish their Y2K status. Repeating this test in the field as part of a plant-wide integrated test will not add any additional benefits related to system Y2K readiness. On the other end of the spectrum, the most highly complex systems, such as distributed control systems, may require in-plant testing of the remediated system. This testing may include a large portion of the plant equipment. However, even in this case, the maximum bounds of the test would involve the individual system being tested and the other devices and systems with which it communicates digital/date-related information.

NEI/NUSMG 97–07 specifies the QA measures that will apply to the activities in NEI/NUSMG 97–07 that apply primarily to project management and implementation. Documentation of Y2K program activities and results includes documentation requirements, project management documentation, vendor documentation, inventory lists, checklists for initial and detailed assessments, and record retention. NEI/NUSMG 97–07 also contains examples of various plans and checklists as appendices that may be used or modified to meet the licensee's specific needs and/or requirements.

After issuing NEI/NUSMG 97–07, NEI conducted workshops and other means of sharing the experiences on the use of the document. In November 1997, NEI and NUSMG conducted the first in a series of industry-wide workshops on Y2K issues for project managers in charge of ensuring Y2K readiness at all operating nuclear power plants. In December 1997, NEI created an on-line bulletin board to share technical information and experiences related to testing and repairing computers and equipment.

In January 1998, the NRC issued a draft generic letter for public comment which proposed: (1) that licensees of operating nuclear power plants be required to provide certain information regarding their programs that address the Y2K problem in computer systems at their facilities; and (2) to endorse the guidance in NEI/NUSMG 97–07 as one possible approach in implementing a plant-specific Y2K readiness program, if augmented in the area of risk management, contingency planning, and remediation of embedded systems [**Federal Register** (63 FR 4498)]. In the absence of adverse comment on the adequacy of the guidance in NEI/NUSMG 97–07, the NRC issued GL 98–01 on May 11, 1998 [**Federal Register** (63 FR 27607)]. In August 1998, NEI issued an industry document, NEI/NUSMG 98–07, ''Nuclear Utility Year 2000 Readiness Contingency Planning,'' that provided additional guidance for establishing a plant-specific contingency planning process. NEI/NUSMG 98–07 addressed management controls, preparation of individual contingency plans, and development of an integrated contingency plan that allows the licensee to manage internal and external risks associated with Y2K-induced events. External events that should be considered for facility-specific contingency planning include electric grid/transmission/distribution system events, such as loss of off-site power, grid instability and voltage fluctuations, load fluctuations and loss of grid control systems; loss of emergency plan equipment and services; loss of essential services; and depletion of consumables. NRC considers the guidance in NEI/NUSMG 98–07, when properly implemented, as an acceptable approach for licensees to mitigate and manage Y2K-induced events that could occur on Y2K-critical dates. In GL 98–01, NRC required all operating nuclear power plant licensees to submit written responses regarding their facility-specific Y2K readiness program in order to confirm that they are addressing the Y2K problem effectively. All licensees have responded to GL 98–01, stating that they have adopted a plant-specific Y2K readiness program based on the guidance of NEI/NUSMG 97–07, and the scope of the program includes identifying and, where appropriate, remediating, embedded systems, and provides for risk management and the development of contingency plans.

GL 98–01 [1] also requests a written response, no later than July 1, 1999, confirming that these facilities are Y2K ready with regard to compliance with the terms and conditions of their license and NRC regulations. Licensees that are not Y2K ready by July 1, 1999, must provide a status report and schedule for the remaining work to ensure timely Y2K readiness. By July 1, 1999, all licensees responded to GL 98–01, Supplement 1. The responses indicated that 68 plants are Y2K ready and 35 plants need to complete work on a few non-safety computer systems or devices after July 1, 1999 to be Y2K ready.

As part of its oversight of licensee Y2K activities, NRC staff conducted sample audits of 12 plant-specific Y2K readiness programs. The objectives of the audits were to—

- Assess the effectiveness of licensees' programs for achieving Y2K readiness and in addressing compliance with the terms and conditions of their license and NRC regulations and continued safe operation.
- Evaluate program implementation activities to ensure that licensees are on schedule to achieve Y2K readiness in accordance with GL 98–01 guidelines.
- Assess licensees' contingency planning for addressing risks associated with events resulting from Y2K problems.

The NRC determined that this approach was an appropriate means of oversight of licensee Y2K readiness efforts because: (1) all licensees had committed to the nuclear power

[1] On January 14, 1999, NRC issued GL 98–01, Supplement 1, ''Year 2000 Readiness of Computer Systems at Nuclear Power Plants,'' which provided licensees with a voluntary alternate response to that required by GL 98–01. The alternate response, also due by July 1, 1999, should provide information on the overall Y2K readiness of the plant, including those systems necessary for continued plant operation that are not covered by the terms and conditions of the license and NRC regulations.

industry Y2K readiness guidance (NEI/NUSMG 97–07) in their first response to NRC GL 98–01; and (2) the audit would verify that licensees were effectively implementing the guidelines. The audit sample of 12 licensees included large utilities such as Commonwealth Edison and Tennessee Valley Authority as well as small single-unit licensees such as North Atlantic Energy (Seabrook) and Wolf Creek Nuclear Operating Corporation. The NRC staff selected a variety of types of plants of different ages and locations in this sample in order to obtain the necessary assurance that nuclear power industry Y2K readiness programs are being effectively implemented and that licensees are on schedule to meet the readiness target date of July 1, 1999, established in GL 98–01. Also, NRC staff had not identified any Y2K problems in safety-related actuation systems as part of its audit activities.

In late January 1999, the NRC staff completed the 12 audits. At the conclusion of the audits, the NRC staff had the following observations:

- Plant-specific Y2K projects based on NEI/NUSMG 97–07 began in mid to late 1997. Use of NEI/NUSMG 97–07 guidance results in an effective, structured program. The programs are generally on schedule for plants to be Y2K ready by July 1, 1999. However, at some plants the licensees have scheduled some remediation, testing, and final certification for the fall 1999 outage.
- Management oversight is vital for program effectiveness.
- Sharing information through owners groups, utility alliances, the Electric Power Research Institute, and NEI is aiding the overall nuclear industry effort.
- Independent audits and peer reviews of programs are very useful.
- Safety system functions are usually not affected. There is limited computer use in safety-related systems and components.
- Failures identified in embedded devices have generally not affected the functions performed but have led to errors such as incorrect dates in printouts, logs, or displays.
- Central control of Y2K program activities, effective QA (including the use of existing plant procedures and controls), and independent peer reviews promote consistency across activities and improve the program.

On the basis of these audit observations, the NRC staff concluded that the audited licensees are effectively addressing Y2K issues and are undertaking the actions necessary to achieve Y2K readiness in accordance with the GL 98–01 target date, although some plants will have some remediation, testing, and final certification scheduled for the fall 1999 outage. The NRC staff did not identify any issues that would prevent these licensees from achieving Y2K readiness.

Licensee Y2K contingency planning efforts had not progressed far enough during the original 12 audits for a complete NRC staff review of the adequacy of implementation of the Y2K activities. Therefore, the NRC staff audited the contingency planning efforts of six licensees different from the 12 included in the initial sample Y2K readiness audits. These audits focused on the licensee's approach to addressing both internal and external Y2K risks to safe plant operations based on the guidance in NEI/NUSMG 98–07. These audits were completed in June 1999.

In addition to NRC staff activities addressed above, NRC regional staff reviewed plant-specific Y2K program implementation activities at all operating nuclear power plants. The regional staff used guidance prepared by NRC Headquarters staff, which conducted the 12 sample audits. These reviews were completed by July 1999. One of the public comments received by NRC in response to the petition indicated that the audits conducted by NRC staff are too few. On the basis of the information above, the NRC staff has reviewed the Y2K programs at all operating nuclear power plants, thereby addressing this comment.

NRC staff will continue its oversight of Y2K issues at nuclear power plants through the remainder of 1999. On the basis of the reviews of the licensee responses to GL 98–01, Supplement 1, findings of the additional audits and reviews, and any additional information, NRC will, by September 1999, determine the need for issuing orders to address Y2K readiness issues, including, if warranted, shutdown of a plant. At this time, NRC believes that all licensees will be able to operate their plants safely during the transition from 1999 to 2000 and does not believe that significant plant-specific action directed by NRC is likely to be needed.

As discussed above, GL 98–01 set a date of July 1, 1999, for licensees to submit information on their efforts to complete their plant-specific Y2K program. The July 1, 1999, date was selected to ensure that there would be adequate time for the Commission to determine what additional regulatory action, if any, would be necessary to ensure that Y2K problems will not threaten adequate protection to public health and safety. Licensees of plants with a projected completion date by September 30, 1999, will be monitored to ensure that the schedules are maintained. Completion of plant-specific items identified by licensees in the generic letter responses will be documented in routine NRC inspection reports. The licensees of the plants that are scheduled to be Y2K ready after September 30 will receive additional scrutiny on a case-by-case basis to ensure that no Y2K deficiencies remain. If, by September 30, 1999, it appears that Y2K readiness activities will not be completed by December 31, 1999 transition such that there is sufficient assurance that all license conditions and relevant NRC regulations [2] are met, the NRC will take appropriate regulatory action, including the issuance of orders requiring specific actions, if warranted. NIRS presents no information or argument why these above actions by the licensees and the inspection, auditing, and oversight activities of the NRC are insufficient to address Y2K problems, such that actions required in NIRS' proposed rule are necessary.

B. The Need for Y2K ''Compliance,'' as Opposed to ''Readiness''

NIRS' proposed rule would require that nuclear power plants be shut down by December 1, 1999, unless licensees demonstrate that Y2K compliance has been achieved. However, NIRS has not explained why ''Y2K compliance,'' as opposed to ''Y2K readiness,'' is necessary. ''Y2K compliant'' is generally understood as referring to computer systems or applications that accurately process date/time data (including but not limited to calculating, comparing, and sequencing) from, into, and between the 20th and 21st centuries, the years 1999 and 2000, and leap-year calculations. ''Y2K ready'' is generally understood as referring to a computer system or application that has been determined to be suitable for continued use into the year 2000 even though the computer system or application is not fully Y2K compliant. For ''Y2K ready'' systems, licensees may have to rely upon work arounds and other activities to ensure that the systems, components,

[2] These regulations are—

- 10 CFR 50.36, ''Technical Specifications,'' paragraph (c)(3), ''Surveillance requirements,'' and paragraph (c)(5), ''Administrative controls.''
- 10 CFR 50.47, ''Emergency Plans,'' paragraph (b)(8).
- Appendix B to 10 CFR Part 50, Criterion III, ''Design Control,'' and Criterion XVII, ''Quality Assurance Records.''
- Appendix E to 10 CFR Part 50, Section VI, ''Emergency Response Data System.''
- Appendix A to 10 CFR Part 50, General Design Criterion (GDC) 13, ''Instrumentation and Control''; GDC 19, ''Control Room''; and GDC 23, ''Protection System Failure Modes.''

and equipment function as intended. Prudence might lead to Y2K compliance as an objective for remedial activities in order to reduce licensee costs of implementing workarounds and other activities in the interim until full Y2K compliance is achieved. However, protection of public health and safety does not necessitate establishment of Y2K compliance as a regulatory requirement, and failure to achieve compliance should not require plant shutdown, so long as Y2K readiness is achieved. Accordingly, the NRC does not believe that a rule that requires Y2K compliance, or Y2K readiness, is appropriate or necessary for ensuring reasonable assurance of adequate protection at nuclear power plants after December 1, 1999.

C. Limited Susceptibility of Nuclear Power Plant Systems to Y2K Problems

NRC audits and reviews indicate that most nuclear power plant systems necessary for shutting down the reactor and maintaining it in a safe shutdown condition are not susceptible to Y2K problems. The majority of commercial nuclear power plants have protection systems that are analog rather than digital. Because Y2K concerns are associated with digital systems, analog reactor protection system functions are not affected by the Y2K issue. Errors such as incorrect dates in printouts, logs, or displays have been identified by licensees in safety-related devices, but the errors do not affect the functions performed by the devices or systems. Most Y2K issues are in balance-of-plant and other systems that have no direct functions necessary for safe operation of the reactor.

With respect to safety systems using digital electronics that are necessary for performing safe-shutdown and maintaining the reactor in a safe shutdown condition, licensees are undertaking the NEI/NUSMG 97–07 and NEI/NUSMG 98–07 processes described above for addressing Y2K problems. With respect to balance-of-plant systems, licensees implementing their plant-specific Y2K program are classifying important balance-of-plant and other non-safety-related systems (such as those that support continued plant operations, provide information and aid to the plant operators like sequence-of-events monitoring for tracking post-shutdown status of plants, and whose failure could lead to a plant transient or trip) as ''mission-critical'' or ''high.'' Systems and equipment classified as mission-critical or high, when found to be Y2K susceptible during the assessment stage of the Y2K program, are also scheduled to be remediated similar to safety-related systems.

In sum, the NRC believes that the actual scope of plant systems necessary to provide reasonable assurance of adequate protection to public health and safety, which are potentially susceptible to Y2K problems, is relatively limited and that the licensees' current activities are sufficient to ensure that Y2K problems will not adversely affect safety-related or balance-of-plant systems.

D. Public Comments

One public comment in support of the NIRS petition stated that embedded chips are difficult to identify and the effects of their failures are poorly understood, especially in the U.S. power grid. When the NRC staff was developing GL 98–01, it recognized that embedded systems pose a potential Y2K problem that must be recognized and addressed in any successful Y2K effort. Accordingly, GL 98–01 informed licensees that Y2K programs should be augmented to address remediation of embedded systems. Licensees have stated in their responses to the generic letter that embedded systems are being addressed in their Y2K programs, and these statements have been confirmed by NRC audits to date. NRC understands that the electric utilities providing power to the grid have similar efforts underway that are being monitored by the North American Electric Reliability Council.

One public comment in support of the petition indicated that the rule should require nuclear power plants to shut down 6 months before the end of 1999 to allow a safe period of time to shut down the plant. The NRC does not agree that it takes 6 months to safely shut down a plant. Under normal conditions, it takes several hours to safely shut down a nuclear power plant by reducing reactor power gradually. However, in an emergency, the reactor can be shut down safely within seconds, either automatically or manually. The reactor will be shut down automatically by the reactor protection system upon the sensing of an unusual condition. Moreover, the operator always has the capability to manually shut down the reactor using the reactor protection system. Accordingly, the NRC does not agree that it is necessary to shut down nuclear power plants 6 months before the end of 1999 in order to ensure a safe shutdown of the plants.

A commenter in favor of the petition stated that the Y2K problem could increase the chance of a meltdown. However, the commenter did not provide any basis for this assertion. The NRC disagrees with the commenter. Safety functions performed by the reactor protection system for shutting down the reactor and by the engineered safety features actuation for mitigating accidents, cooling down the reactor, and providing emergency power to safety systems upon a loss of offsite power are not affected by the Y2K problem. Although there is some concern that the reliability of the offsite power sources may be lower during the Y2K transition, if a loss of offsite power were to occur because of Y2K, the plant would trip automatically because all nuclear plants are designed for such an event. The emergency onsite power supply system would provide power to the safety system equipment automatically. This sequence of events is not affected by the Y2K problem because all these safety systems do not rely upon computer-operated systems or components that are date-sensitive. For these reasons, the NRC disagrees that a Y2K problem could increase the probability of a core melt accident at a nuclear power plant.

One public comment in support of the petition indicated that the audits conducted by NRC staff are too few. The NRC has responded to this comment in section I.A.

E. Summary

The NRC believes that licensees' Y2K activities and programs, considered together with NRC oversight activities, provide a reasonable approach for ensuring that Y2K problems will not pose an unreasonable threat to public health and safety. NIRS has not explained why this regulatory approach will not provide reasonable assurance of adequate protection from any potential Y2K-initiated problems at operating nuclear power plants, such that the rule proposed by NIRS is necessary.

II. Part 50 Non-Power Reactor Licensees

NRC used several methods to inform all non-power reactor (NPR) licensees of the need to ensure that their facilities are ready for the year 2000. In 1996, NRC staff contacted all NPR licensees informing them of a potential for problems in systems either controlling or supporting the reactor because of Y2K issues. In December 1996, NRC issued IN 96–70 to alert nuclear facility licensees to the Y2K problem. IN 96–70 described the potential problems that nuclear power plant computer systems and software may encounter as a result of the change to the new century and how the Y2K issue may affect NRC licensees. IN 96–70 encouraged all licensees to examine their uses of computer systems and software well

before the year 2000. IN 96–70 also suggested that licensees consider appropriate actions for examining and evaluating their computer systems for Y2K vulnerabilities.

NRC also coordinated with the Organization of Test, Research and Training Reactors (TRTR) to distribute information about the Y2K problem through TRTR newsletters. These newsletters were distributed to all members of the organization to focus attention on the Y2K problem and related ongoing activities. The staff at all 37 licensees with operating reactors receive copies of the TRTR newsletter. The TRTR newsletters articles included ''Concerns about the Millennium,'' February 1997; ''Year 2000 Concerns,'' February 1998; ''NRC Response on Year 2000,'' May 1998; ''More on the Y2K Issue,'' August 1998; and ''Another Y2000 Notice,'' November 1998. NRC staff has confirmed through several telephone conversations and discussions during inspections that all licensees of operating reactors are aware of the Y2K concerns and have ongoing actions to be Y2K ready by the end of the year or sooner.

Since 1998, while conducting inspections of NPR facilities, the NRC staff is also verifying that licensees are addressing the Y2K problem with regard to reactor safety. NRC staff has inspected about 50 percent of the operating reactors and intends to complete the inspections of all operating NPRs by October 1999. These inspections will verify that the licensees have programs to deal with Y2K and that all digital safety equipment at these facilities are considered in the program. Moreover, most institutions that operate the NPRs have their own Y2K programs that include the NPRs.

The safety systems at most operating reactors are analog systems that are not affected by the Y2K problem. Several operating reactors have digital safety equipment that provides instrument indication to the facility operator that is part of the licensee's Y2K program. Also, seven of these reactors have digital reactor protection system functions also considered in the licensee's Y2K program. These systems operate in parallel with the analog reactor protection systems, which are not affected by Y2K. Also, the digital systems initiate reactor scrams in case of a malfunction in the digital equipment. The analog systems generally provide the required reactor safety functions. The analog systems are independent of the digital equipment and have built-in redundancy to ensure that the reactor scrams. The power levels of these reactors are low (up to a maximum of 2 MWt) and many of them operate at low temperatures in relatively large pools of water. The only safety function that is generally required is for the reactor to scram. Thus, the Y2K concern poses very low risk. NIRS does not explain why the licensees' Y2K program activities and NRC's oversight of the licensees' implementation of the programs are inadequate such that the rule proposed by NIRS is necessary to provide reasonable assurance of adequate protection.

III. Part 50 Decommissioning Nuclear Power Plant Licensees

The suggested rule language in the petition would require that all facilities not compliant with Y2K issues be shut down by December 1, 1999. Nuclear power plants that are permanently shutdown with fuel removed from the reactor core would, therefore, not be subject to the rule as proposed by NIRS. However, since the purpose of the proposed rule appears to be directed to ensuring that Y2K problems at all nuclear power plants—both operating and decommissioning—will not pose a threat to public health and safety, the following discussion on the activities for addressing the Y2K problem at decommissioning nuclear power plants is provided.

There are two potential radiological health and safety concerns with respect to Y2K problems at decommissioning plants: (1) spent fuel storage, including site security; and (2) the actual conduct of dismantlement and decommissioning activities. Of greater concern is the spent fuel storage. The concerns in this area relate to providing sufficient cooling to the spent fuel and providing sufficient security against diversion and sabotage of the spent fuel. There are 21 decommissioning nuclear power plants that have been shut down more than a year, 6 of which have had spent fuel removed from the site. Accordingly, there are only 15 decommissioning nuclear power plants where spent fuel storage is of concern. Although licensees for all of these facilities are implementing Y2K programs, it is unlikely that Y2K problems would pose a significant problem to providing sufficient spent fuel cooling. First, electrical and makeup water systems for spent fuel pools are not computer-controlled. Moreover, even if there was an interruption in electrical power, there is a long time period for the licensee to respond to the problem before integrity of the spent fuel rods becomes an issue because sufficient time is available to take compensatory action before boiling starts. The spent fuel pool is conservatively estimated (based on the Zion units) to begin boiling 68 hours after loss of the spent fuel pool cooling system. Boiling does not become a concern until the fuel rods begin to be uncovered by boil-off of cooling water. Since fuel rods are normally covered by 23 feet of water (for purposes of shielding), and it would take approximately two weeks or more to begin uncovering the spent fuel rods (assuming that no make-up water is added to the pool), the NRC believes that there is sufficient time to recover electrical power and/or provide makeup water to prevent the fuel rods from uncovering.

The other threat to spent fuel is diversion and sabotage. Licensees of decommissioning reactors are taking steps to ensure that Y2K problems will not disable necessary security and safeguards systems and controls. Licensees with computer-based site security systems that have been identified as potentially Y2K vulnerable have tested the system for Y2K, upgraded the system to be Y2K compliant, or will make the system Y2K compliant before the end of 1999.

With respect to the safety of conducting dismantlement and decommissioning activities, the NRC does not believe that these activities are subject to Y2K problems that would pose a threat to public health and safety because the conduct of these activities in the field do not rely upon computer-controlled devices to ensure protection against radiological dangers.

In sum, licensees of decommissioning nuclear power plants are implementing Y2K activities that address equipment and systems important to safety, such that there is reasonable assurance of adequate protection to public health and safety.

IV. Major Parts 40 and 70 Licensees

To alert major Parts 40 and 70 licensees of the potential Y2K problem, NRC issued Information Notice (IN) 96–70, ''Year 2000 Effect on Computer System Software,'' dated December 24, 1996. IN 96–70 described the potential Y2K problems, encouraged licensees to examine their uses of computer systems and software well before the year 2000, and suggested that licensees consider appropriate actions to examine and evaluate their computer systems for Y2K vulnerabilities.

In order to gather Y2K information regarding materials and major fuel cycle facilities, NRC formed a Y2K Team within the Office of Nuclear Material Safety and Safeguards (NMSS) in 1997. From September 1997 through December 1997, this NMSS Y2K Team visited a cross-section of materials

licensees and fuel cycle facilities and conducted Y2K interviews. Each licensee or facility visited by the team indicated that they were aware of the Y2K issue and were in various stages of implementing their Y2K readiness program.

On June 22, 1998, the NRC staff issued Generic Letter (GL) 98–03, ''NMSS Licensees' and Certificate Holders' Year 2000 Readiness Programs.'' This GL requested major Parts 40 and 70 licensees to submit by September 20, 1998, written responses regarding their facility-specific Y2K readiness program in order to confirm that they were addressing the Y2K problem effectively. All licensees responded to GL 98–03 by stating that they have adopted a facility-specific Y2K readiness program and that the scope of the program included identifying and, where appropriate, remediating, hardware, software, and embedded systems, and provided for risk management and the development of contingency plans.

GL 98–03 also requested a written response, no later than December 31, 1998, which confirmed that these facilities were Y2K ready or provided a status report of work remaining to be done to become Y2K ready, including completion schedules. All licensees provided a second response to GL 98–03, which identified work remaining to be done, including completion schedules. Furthermore, following the second response, NRC requested a third written response, no later than July 1, 1999, which would confirm that these facilities are Y2K ready or would provide an updated status report.

On August 12, 1998, IN 98–30, ''Effect of the Year 2000 Computer Problem on NRC Licensees and Certificate Holders,'' provided licensees additional information on the Y2K issue. IN 98–30 provided definitions of ''Y2K ready'' and ''Y2K compliant,'' encouraged licensees to contact vendors and test their systems for Y2K problems, and described elements of a Y2K readiness program.

Between September 1997 and October 1998, the major Parts 40 & 70 licensees were also asked Y2K questions during other inspections. Based on these Y2K inspections, the licensees were aware of the Y2K problem and were adequately addressing Y2K issues. There have been no identified risk-significant Y2K concerns for major Parts 40 and 70 licensees.

NIRS' proposed rule would require that licensees be shutdown by December 1, 1999, unless licensees demonstrate that ''Y2K compliance'' has been achieved. However, NIRS has not explained why ''Y2K compliance'' as opposed to ''Y2K readiness'' is necessary. NIRS asserted that NRC has not made explicit how it will define ''Y2K compliance.'' However, NRC explicitly defined the terms ''Y2K ready'' and ''Y2K compliant'' in GL 98–03. ''Y2K ready'' was defined as a computer system or application that has been determined to be suitable for continued use into the year 2000, even though the computer system or application is not Y2K compliant. ''Y2K compliant'' was defined as a computer system or application that accurately processes date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the years 1999 and 2000, and beyond, including leap-year calculations. Thus, by definition, systems that are ''Y2K ready'' are able to perform their functions properly. There is no discernable safety reason why achieving Y2K readiness rather than Y2K compliance should result in facility shutdown. Accordingly, there is no basis for requiring facility shutdown if a licensee cannot demonstrate Y2K compliance.

NIRS presents no information or argument why those actions by the licensees and NRC described above are insufficient to address Y2K problems and to demonstrate that reasonable assurance of adequate protection will not be provided after December 1, 1999, so that facility shutdown is necessary.

V. Part 30 and Minor Parts 40 and 70 Licensees

To alert Part 30 and minor Parts 40 and 70 licensees, the NRC issued INs 96–70 and 98–30, which have been discussed in Section IV, ''Major Parts 40 and 70 Licensees.''

In addition to the efforts by the NMSS Y2K Team to gather information regarding materials licensees and major fuel facilities from September through December 1997, discussed under Section IV, NMSS staff also conducted telephone interviews with device manufacturers and distributors. Further, NRC determined that few of approximately 5,800 materials licensees use processes or have safety systems that are computer-controlled, thus minimizing potential Y2K impacts. The interviews and site visits confirmed that licensees were identifying and addressing potential Y2K problems.

From the interviews conducted by the NMSS Y2K Team, NRC learned that early versions of some treatment planning systems (computer systems for calculating dose to medical patients being treated with radiation or radioactive material) have Y2K problems and that upgrades for treatment planning systems were available. However, treatment planning systems are regulated by the U.S. Food and Drug Administration (FDA) and not by NRC because the systems do not contain licensed material. NRC has shared information on non-Y2K-compliant treatment planning systems with the FDA. For materials licensees, the NMSS Y2K Team did not identify any Y2K issues for NRC-regulated material. As a result of the interviews and site visits, NRC's focus has been to determine if any commercially available devices (medical and industrial) have potential Y2K vulnerabilities and to ensure that licensees evaluate self-developed systems, commercial off-the shelf software and hardware, and safety systems.

In addition to Y2K interviews, materials inspectors have been instructed to confirm receipt of NRC's information notices, determine whether the licensees have identified any potential problems associated with the Y2K issue, and note any corrective actions taken by the licensees. Through the routine inspection process, NRC has made assessments of the Y2K status of its materials licensees and continues to do so. To date, only the treatment planning systems described above, dose calibrators, and a tote position display for an irradiator have been identified through the inspection process as having Y2K problems. NRC materials inspectors have indicated that licensees are aware of available upgrades for treatment planning systems and dose calibrators. The irradiator tote position display is not a safety system. Further, the irradiator tote position display system that had the Y2K problem was a one-of-a-kind modification made by the licensee (the licensee was authorized by NRC to make the modification). The irradiator licensee is updating the tote position display system to eliminate the Y2K problem. No generic Y2K issues for NRC-regulated material used by materials licensees have been identified.

NIRS asserted that NRC has not made explicit what it plans to do about those facilities that cannot prove compliance. As discussed in Section IV, ''Major Parts 40 and 70 Licensees'' above, NIRS has not explained why ''Y2K compliance'' as opposed to ''Y2K readiness'' is necessary. Furthermore, Y2K readiness is not required for protection of public health and safety for Part 30 and minor Parts 40 and 70 licensees due to the amount and type of licensed material used by them. The risks to the public from these facilities are low. In addition, NRC has determined that few of the

approximately 5,800 materials licensees use processes or have safety systems that are computer-controlled, thus minimizing potential Y2K impacts. Accordingly, there is no basis for requiring facility shutdown if a licensee cannot demonstrate ''Y2K compliance.''

NIRS presents no information or argument why those actions by the licensees and NRC described above are insufficient to address Y2K problems and to demonstrate that reasonable assurance of adequate protection will not be provided after December 1, 1999, so that facility shutdown is necessary.

VI. Public Information

NIRS requested in item (c) of its petition that NRC adopt regulations that would require that licensees make available to the public by December 1, 1999, all information related to the examination and repair, modification, and/or replacement of all computer systems, embedded chips, and other electronic equipment that may be date-sensitive. NIRS indicated that this rule provision is necessary in order to allow ''independent experts'' and the public to examine this information.

The NRC has already made available to the public substantial information on Y2K and the status of licensees' activities to address potential Y2K problems and will continue to make this information public. The audit reports of the NRC staff reviews of the 12 nuclear power plant-specific Y2K readiness project activities and documentation are publicly available both in the Public Document Rooms and the NRC Year 2000 Web site. The Y2K readiness information submitted in July 1999 by nuclear power plant licensees under GL 98–01, Supplement 1, is available to the public, as with any other correspondence that is received from licensees. The reports documenting the NRC staff audits of the six nuclear power plant-specific contingency planning activities and the results of the facility-specific Y2K program reviews of all operating nuclear power plants are also available to the public. The NRC inspection reports with Y2K information from Parts 30, 40, and 70 licensees and the licensees' responses to GL 98–03 have been placed in the PDR. Summaries of (1) inspection reports with Y2K information, (2) GL 98–03 responses, and (3) interviews with a cross-section of materials and fuel cycle licensees on Y2K issues are available on the NRC Year 2000 Web site.

In view of the information that has been made available and will be made available to the public, NIRS has not provided any basis for requiring licensees, by rule, to provide public access to Y2K information beyond that which the NRC has determined must be submitted to the NRC in furtherance of the NRC's regulatory oversight.

Conclusion

The rule proposed by NIRS is not needed because the Commission has determined that the activities taken by licensees to implement a systematic and structured facility-specific Y2K readiness program, together with the NRC's oversight of the licensees' implementation of these Y2K readiness programs, provide reasonable assurance of adequate protection to public health and safety.

For these reasons, the Commission denies the petition.

Dated at Rockville, Maryland, this 17th day of August, 1999.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 99–21750 Filed 8–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

[Docket No. PRM–35–15]

Jeffery C. Angel; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by Jeffery C. Angel. The petition has been docketed by the Commission and has been assigned Docket No. PRM–35–15. The petitioner requests that the NRC amend its regulations concerning the medical use of byproduct material to prohibit the hand-held administration of radiopharmaceuticals by injection and to require the use of the Angel Shield, a device to administer radioactive substances. The petitioner requests that the NRC take this action to make the administration of radiopharmaceuticals by injection safer.

DATES: Submit comments by November 8, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemakings and Adjudications staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

For a copy of the petition, write to David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

You may also provide comments via the NRC's interactive rulemaking website at http://ruleforum.llnl.gov. This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: CAG@nrc.gov).

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7162 or Toll-free: 1–800–368–5642 or E-mail: DLM1@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Background

On June 29, 1999, the Nuclear Regulatory Commission (NRC) received a petition for rulemaking submitted by Jeffery C. Angel. The petitioner requests that the NRC amend its regulations concerning the medical use of byproduct material to prohibit the hand-held administration of radiopharmaceuticals by injection and require the use of the Angel Shield, a device to administer radioactive substances. The petitioner requests that the NRC take this action to make the administration of radiopharmaceuticals by injection safer. The petition has been docketed as PRM–35–15. The NRC is soliciting public comment on the petition for rulemaking.

The NRC's regulations governing the medical use of byproduct material appear in 10 CFR Part 35. Paragraph (c) of § 35.60 requires that an individual use a syringe radiation shield when administering a radiopharmaceutical by injection unless the use of the shield is contraindicated for that patient or human research subject.

Discussion

The petitioner states that the current practice of placing the radiopharmaceutical into a syringe radiation shield and delivering a hand-held injection places the person administering the substance in direct

and immediate contact with the radiopharmaceutical. The petitioner contends that this practice results in the unnecessary exposure of this individual to radiation. The petitioner asserts that the design and engineering of syringe radiation shields is not based on sound radiation protection principles. The petitioner further states that current syringe designs violate the fundamental radiation principles of time, shielding, and distance. The petitioner states that syringe radiation shields provide inadequate radiation protection because—

1. They are hand held, thereby placing an administrator in direct and immediate contact with the radioactive substance;

2. They must be light enough so that they are not cumbersome to work with and consequently, they do not incorporate enough shielding to protect administrators adequately; and

3. There is no shielding at the distal or proximal portions of the shield, which results in direct and unnecessary radiation exposure.

The petitioner refers to the provisions of 10 CFR 20.1101(b) that require licensees to use procedures and engineering controls based on sound radiation protection principles to achieve occupational dose rates that are as low as is reasonably achievable (ALARA).

The Petitioner's Request

The petitioner requests that the NRC amend its regulations concerning the medical use of byproduct material to prohibit the hand-held administration of radiopharmaceuticals by injection. As an alternative, the petitioner suggests that the NRC require the use of the Angel Shield, a radioactive substance administrator that eliminates the hand-held administration of radiopharmaceuticals by injection. The petitioner believes that radiation exposure rates would be immediately and substantially reduced through the use of the Angel Shield. The petitioner asserts that the Angel Shield reduces radiation exposure by—

1. Eliminating the hand-held injection of radiopharmaceuticals;

2. Encapsulating the syringe within the administrator completely thereby providing 360 degrees of protection;

3. Shielding 100 percent of low-energy emissions (140 kev) and 88 percent of high-energy emissions (511 kev);

4. Allowing for the remote administration of the radiopharmaceutical; and

5. Reducing the number of missed injections and subsequent multiple exposures.

The petitioner explains that the Angel Shield uses ½-inch lead walls that completely encapsulate the radiopharmaceutical. The petitioner further explains that the entire administration process is mechanized. This removes the occupational worker from direct and immediate contact with the radioactive substance. As a result, radiation exposure rates are substantially and immediately reduced.

The petitioner contends that the reduction of unnecessary radiation exposure when administering radiopharmaceuticals by injection is of critical importance as the practice of nuclear medicine evolves toward therapeutic applications and the administration of medium and high-energy radiopharmaceuticals. The petitioner states that the one of the NRC's primary duties is to establish regulations on the safe use of nuclear materials. The petitioner contends that prohibiting the hand-held administration of radiopharmaceuticals by injection and requiring the use of the Angel Shield makes the administration of radiopharmaceuticals safer and furthers the goals of ALARA by reducing occupational dose rates.

The Petitioner

The petitioner has been a nuclear medicine technologist for over twenty years and has been exposed to radiation on a recurrent daily basis. He invented a radioactive substance administrator, the Angel Shield, to protect himself and others from unnecessary radiation exposure when administering radiopharmaceuticals by injection.

Dated at Rockville, Maryland, this 17th day of August, 1999.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 99–21792 Filed 8–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–66]

Nuclear Information and Resource Service; Petition for Rulemaking Denial

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–50–66) from the Nuclear Information and Resource Service (NIRS). The petitioner requested that NRC amend its regulations to require licensees of operating nuclear power plant facilities to conduct a full-scale emergency planning exercise that involves coping with a date-sensitive, computer-related failure resulting from a Year 2000 (Y2K) issue. The petitioner requested that NRC take this action to ensure that licensees of nuclear facilities have developed and can implement adequate contingency and emergency plans to address potential major system failures that may be caused by a Y2K computer problem. NRC is denying the petition because the Commission has determined that the actions taken by the licensees to implement systematic and structured Y2K readiness contingency plans for critical Y2K dates in concert with existing required emergency response plans and procedures, and NRC's oversight of the licensees' implementation of these Y2K readiness contingency plans provide reasonable assurance of adequate protection to public health and safety.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letters to the petitioners are available for public inspection or copying in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC, as well as NRC's rulemaking web site at http://ruleforum.llnl.gov.

FOR FURTHER INFORMATION CONTACT: Matthew Chiramal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–2845, E-mail address mxc@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

NRC received three related petitions for rulemaking (PRM–50–65, PRM–50–66, and PRM–50–67), each dated December 10, 1998, submitted by the NIRS concerning various aspects of Y2K issues and nuclear safety. This petition (PRM–50–66) requested that NRC adopt regulations that would require facilities licensed by NRC under 10 CFR Part 50 to develop and implement adequate contingency and emergency plans to address potential system failures. The first petition (PRM–50–65) requested that NRC adopt regulations that would require facilities licensed by NRC under 10 CFR Parts 30, 40, 50, and 70 to be Y2K compliant. The third petition (PRM–50–67) requested that NRC adopt regulations that would require facilities licensed by NRC under 10 CFR Parts 50

and 70 to provide reliable sources of backup power.

Because of the nature of these petitions and the date-specific issues they address, the petitioner requested that the petitions be addressed on an expedited schedule.

On January 25, 1999, NRC published a notice of receipt of this petition for rulemaking in the **Federal Register** (64 FR 3791). It was available on the NRC's rulemaking website and NRC Public Document Room. The notice of receipt of petition for rulemaking invited interested persons to submit comments by February 24, 1999.

The Petition

The petitioner requested that NRC adopt the following text as a rule: [1]

All licensees subject to 10 CFR Part 50 and Appendix E will conduct a full-scale emergency planning exercise (as normally required under 10 CFR 50.47) during 1999. This exercise shall include a component that includes failure of one or more computer or other digital systems (this is popularly known as the ''Y2K bug'') on January 1, 2000, or other relevant date. Licensees that do not conduct, or that fail, this exercise shall close their facilities licensed under this Part by December 1, 1999, until such time as the licensees have conducted a successful exercise.

NRC shall publish and provide to each licensee, within 30 days of the date of this rule, a Regulatory Guide that outlines potential emergency exercise scenarios. NRC shall publish and provide to each licensee, by December 1, 1999, a Regulatory Guide that describes the various scenarios that have been undertaken and the successful (and unsuccessful) responses to the problems posed.

The petitioner stated that although the probability of the occurrence of Y2K-related events that would require emergency response and the implementation of contingency plans is unknown, it would fall within the range of safety matters for which NRC requires emergency planning exercises. Furthermore, the petitioner asserts that addressing Y2K-related problems will require the use of potentially unfamiliar contingency plans, relying on ingenuity to circumvent failure of essential communications systems or failure of offsite emergency responders to perform their tasks effectively and coping with issues not normally tested during emergency exercises.

[1] In preliminary discussion, the petitioner stated, ''We also believe that other major fuel cycle facilities should be subject to a similar rule.'' However, the petitioner provided no supporting reasoning, no regulatory text, and no specific request that NRC adopt such a rule. Therefore, NRC has considered only the specifically requested rule language.

The petitioner considers it prudent to require each licensee to conduct an exercise and that each exercise address a different aspect of the Y2K problem. The petitioner suggested that some exercises should test problems initiated by Y2K-related failures and that others should test problems exacerbated by Y2K-related failures. The petitioner believes that this approach would provide some familiarity with the possible range of issues that could develop and create an overall industry capability to effectively address potential Y2K problems.

Under the petitioner's suggested regulation, the licensees would develop exercise scenarios that would be approved by NRC in an expedited fashion, and NRC would publish and distribute regulatory guides that would outline potential emergency response scenarios and describe the scenarios that were tested and the successful responses to the problem posed.

The petitioner stated that these actions would provide reasonable assurance that nuclear power plant licensees have developed and can implement adequate contingency and emergency plans to address major system failures that may be caused by the Y2K problem.

Public Comments on the Petition

In response to this petition, NRC received 64 comment letters, including 1 letter signed by 25 citizens from the State of Michigan, 3 from nuclear associated industries, 11 from utilities, 13 from private organizations, 1 from the State of Illinois Department of Nuclear Safety, and 35 from private citizens.

Forty-six letters supported the petition, of which 13 were from private organizations, 32 were from private citizens, and one which was signed by 25 citizens of the State of Michigan. Thirty-nine of these 46 letters communicated a brief statement in support of the petition. Seven of the 46 letters, of which 3 were from private individuals and 4 were from private organizations, discussed reasons for supporting the petition.

In some letters, support of the petition was based on belief that actual emergency response exercises will provide invaluable information in addressing Y2K issues because of the complexity of Y2K issues and the lack of experience of licensees of nuclear facilities in responding to such an event.

Others letters stated that all emergency plans rely heavily on offsite sources of help, such as police, fire, and other essential services, but that these services, as well as critical communications entities, may also be vulnerable to the Y2K problem if they are not properly assessed, remedied, and tested. Some letters cited numerous problems that have occurred in previous emergency planning exercises, irrespective of the Y2K problem. An example stated was the Pilgrim exercise of December 13, 1995, in which the Boston Edison Company was unable to communicate to the proper authorities. Other examples cited the occurrence of lost electrical buses. Some letters communicated the importance of testing and retesting for every conceivable contingency.

Eighteen letters opposed the petition, of which 3 were from private citizens, 3 were from nuclear associated industries, one was from the State of Illinois Department of Nuclear Safety, and 11 were from utilities. The letters opposing the petition stated that the additional emergency planning exercise suggested by the petition is not needed to ensure public health and safety. These letters indicated that NRC analysis and industry testing have confirmed that safety systems will function to shut down a reactor if required, that licensees and NRC are developing contingency plans for key Y2K rollover dates, and that these contingency plans will evaluate specific risk factors and, where appropriate, provide mitigation strategies to allow continued safe operation. These letters stated that this effort provides a rational review and systematic approach to issues that could affect the continued safe operation of a plant within the conditions of its license, which the commenters believe is a more effective approach for ensuring that plants continue to operate and meet commitments.

Reasons for Denial

Pursuant to 10 CFR 50.47, ''Emergency Plans''; 10 CFR 50.54, ''Conditions of Licenses,'' paragraphs (q), (s), and (t); and Appendix E to 10 CFR Part 50, nuclear facilities are required to provide emergency response capabilities that take into account a variety of circumstances and challenges, to exercise their plans periodically to develop and maintain key skills of involved personal, and to identify deficiencies in the emergency plan and personnel and take appropriate actions to correct identified deficiencies. In accordance with 10 CFR 50.54(q), nuclear power reactor licensees are required to follow and maintain in effect emergency plans that meet the planning standards in 10 CFR 50.47(b) and the requirements of Appendix E to Part 50. In part, licensees are required to train

and test their organization and associated equipment to ensure that under all conditions and contingencies, such as power outages and computer and communication failures, appropriate emergency response is available and effective in an emergency.

To accomplish these requirements, licensees conduct numerous exercises and drills throughout the year. Inherent in the nature of emergency response is the realization that in an emergency, equipment may fail, loss of power may occur, personnel may not be available, and weather conditions may cause the emergency or escalate it. It is typical that, in the development of scenarios for exercises and drills, as well as in employee training programs, communication links, plant computers, and display and monitoring equipment are ''out of service'' or ''fail'' at inappropriate times. The NRC staff commonly oversees exercises that include these types of problems and the licensee's staff benefits from having to work around this training obstacle when a particular approach has been blocked. The NRC staff has observed licensees resorting to manual and backup systems to respond effectively and overcome these obstacles.

In terms of the effects of the Y2K problem, the NRC staff believes that the Y2K problem is not unique—it is a software error. Although the cause of computer and equipment failure may be different under Y2K, the result and the expected response are the same as situations encountered during many previous emergency exercises and drills. Therefore, there is no need to require licensees to conduct additional exercises to test specifically for potential Y2K failures.

In addition to existing emergency response plans, licensees of operating nuclear power plants and decommissioning power plants where spent fuel is stored at the plant site are preparing and implementing Y2K contingency plans as part of the plant-specific Y2K program. Operating nuclear power plant-specific Y2K contingency plans are based on the guidance in Nuclear Energy Institute/ Nuclear Utilities Software Management Group NEI/NUSMG 98–07,[2] ''Nuclear Utility Year 2000 Readiness Contingency Planning,'' dated August 1998, which provides a process and a method for preparing and implementing a facility-specific integrated contingency plan that considers specific risks from internal and external sources. The Y2K contingency plans are generally built upon existing contingency activities (such as emergency preparedness, disaster recovery, storm damage restoration, grid restoration, and station blackout) and plant emergency procedures, coupled with the consideration that potential Y2K-related failures could affect many systems and components. Among the external events that are considered for contingency planning are—

- the loss of emergency plan equipment and services: pagers, radios, sirens and meteorology information, and
- the loss of essential services: telephone, microwave, water, satellites, networks, security, police, and fire-fighting capability.

The need for simulated exercises, development of special procedures, and Y2K contingency plan specific training is considered in the Y2K contingency planning process. Contingency plan verification is included in NEI/NUSMG 98–07 guidelines to provide confidence that the plans can be executed as intended. The contingency planning efforts, as outlined in NEI/NUSMG 98–07, provide additional training, staffing, and material procurement for occurrences that could happen at any time but that have a higher probability of occurring during the critical Y2K-related dates. Licensees and NRC are currently developing contingency plans for critical Y2K rollover dates. These contingency plans evaluate specific risk factors and, where appropriate, provide mitigation strategies to cope with plant-specific effects of the most probable and serious failures that might be initiated or exacerbated by the Y2K problem.

On May 11, 1998, NRC issued Generic Letter (GL) 98–01, ''Year 2000 Readiness of Computer Systems at Nuclear Power Plants.'' In GL 98–01, NRC requested that all operating nuclear power plant licensees submit written responses regarding their facility-specific Y2K readiness programs in order to obtain confirmation that licensees are addressing the Y2K problem effectively. All licensees have responded to GL 98–01, stating that they have adopted plant-specific programs that are intended to make the plants Y2K ready by July 1, 1999. These programs are patterned on industry guidelines (NEI/NUSMG 97–07, ''Nuclear Utilities Year 2000 Readiness'') that have been found acceptable by NRC. GL 98–01 also requests a written response, no later than July 1, 1999, confirming that these facilities are Y2K ready, including contingency planning. Licensees who are not Y2K ready by July 1, 1999, must provide a status report and schedule for the remaining work to ensure timely Y2K readiness.

NRC considers the guidance in NEI/ NUSMG 98–07, when properly implemented, as an acceptable approach for licensees to mitigate and manage Y2K-induced events that could occur on Y2K-critical dates.

As part of its oversight of licensee Y2K program activities, NRC staff audited the contingency planning effort of six licensee facilities. These audits were completed during June 1999. These audits focused on the licensee's approach to addressing both internal and external Y2K risks to safe plant operation, based on the guidance in NEI/NUSMG 98–07. The audits at these facilities examined in detail back-up measures the utilities have in place to deal with possible Y2K problems, either on site or off site, including problems with the loss of emergency plan equipment and services (pagers, radios, sirens, and meteorology), the loss of essential services (telephone, microwave, water, satellites, networks, security, police), and the failure of the offsite emergency responders to perform their task effectively.

Additionally, NRC regional staff reviewed Y2K activities at all operating nuclear power plants to verify the status of licensee efforts to ensure that all plants will be able to function safely on January 1, 2000, and beyond. The reviews: (1) verify that all NRC licensees have implemented Y2K program activities; (2) evaluate the progress they have made to ensure that they are on schedule to achieve Y2K readiness; and (3) assess their contingency plans for addressing Y2K-related issues. The regional staff is using guidance prepared by the NRC Headquarters staff that is based on NRC GL 98–01, NEI/NUSMG 97–07, and NEI/NUSMG 98–07. These reviews were completed by July 1999.

The offsite components of emergency preparedness and response, which are the responsibility of States, counties, and municipalities, are already utilized by those governmental entities to address a wide range of events (e.g., grid failures, tornadoes, floods, hurricanes, snowstorms, industrial accidents). These events often involve widespread loss of normal capabilities and services (e.g., loss of electricity and telephone service, blocking of roads) coupled with the need for a multi-capability response. NRC is also working closely with the Federal Emergency Management Agency (FEMA) on its plans to conduct Y2K workshops for the State and local radiological emergency preparedness community. NRC and nuclear facilities licensees will participate in these workshops. NRC is an active member of

[2] NEI/NUSMG 98–07 was preceded by NEI/ NUSMG 97–07, ''Nuclear Utility Year 2000 Readiness,'' dated October 1997, which presented a strategy for developing and implementing a nuclear utility Y2K program.

the Emergency Services Sector Working Group for Y2K, which is headed by FEMA. In addition, to facilitate Agreement State efforts to address the Y2K issue, a link to State Government Year 2000 Web sites has been provided by the NRC. NRC will make every effort to share with the States any Y2K issue that may also affect Agreement States or Agreement State licensees.

NIRS has not explained why the approach currently being pursued by the licensees, the nuclear industry, and NRC does not provide reasonable assurance of adequate emergency response capabilities during the transition from 1999 to 2000.

In the case of research and training/test reactors, licensees of these facilities also have established programs to evaluate and correct Y2K deficiencies. Many research reactors will be shut down on January 1, 2000, as the institutions operating them (e.g., universities and laboratories) will be closed for the holiday. Further, these reactors often have passive safety features and low power levels, which ensure minimal potential offsite consequences. In addition, NRC staff concluded that any research reactor in operation on January 1, 2000, could be readily shut down manually using emergency procedures and existing shutdown systems, even if their operational systems should experience a Y2K problem.

Conclusion

Plant-specific industry planning for Y2K contingencies, which is built upon existing emergency response plans and procedures required by the current emergency preparedness regulations, provides a reasonable assurance that adequate protection measures will be taken in the event of radiological emergency during Y2K critical dates. Imposing a new prescriptive rule as proposed in the petition in an area in which the industry action is already exceeding the actions that address the petitioner's general issues would be counterproductive to the ongoing Y2K readiness efforts of the licensees. Therefore, the additional full-scale emergency planning exercise requested by the NIRS is not necessary to ensure emergency response capabilities to provide reasonable assurance of adequate protection to public health and safety despite the occurrence of Y2K problems.

For these reasons, the Commission denies the petition.

Dated at Rockville, Maryland, this 17th day of August, 1999.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 99–21751 Filed 8–20–99; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 70

[Docket No. PRM–50–67]

Nuclear Information and Resource Service; Petition for Rulemaking Denial

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–50–67) from the Nuclear Information and Resource Service (NIRS). The petitioner requested that the NRC amend its regulations to require that nuclear facilities ensure the availability of backup power sources to power safety systems of reactors and other nuclear facilities in the event of a date-sensitive, computer-related incident resulting from a Year 2000 (Y2K) issue. The petitioner requested that NRC take this action to ensure that reliable backup sources of power are available in the event of a Y2K incident. The Commission agrees that maintaining reliable emergency power is important and has considered the petitioners request as part of its review of existing regulatory requirements and licensee actions to assure reliable emergency power during the Y2K transition. Based on this review, the Commission has determined that existing regulatory requirements, actions taken by the licensees to implement a systematic and structured Y2K readiness program adequately address Y2K issues, and NRC's oversight of the licensees' implementation of these programs provide reasonable assurance of adequate protection to public health and safety. Because the Commission has concluded that existing programs already address the petitioner's concern regarding availability of emergency power, the petition is denied.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and NRC's letters to the petitioners are available for public inspection or copying in NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC, as well as on NRC's rulemaking web site at http://ruleforum.llnl.gov.

FOR FURTHER INFORMATION CONTACT: Matthew Chiramal, Office of Nuclear Reactor Regulation, US Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–2845, E-mail address mxc@nrc.gov, or Gary W. Purdy, Office of Nuclear Material Safety and Safeguards, US Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–7897, E-mail address gwp1@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

NRC received three related petitions for rulemaking (PRM–50–65, PRM–50–66, PRM–50–67), each dated December 10, 1998, submitted by the NIRS concerning various aspects of Y2K issues and nuclear safety. This petition (PRM–50–67) requested that NRC adopt regulations that would require facilities licensed by NRC under 10 CFR parts 50 and 70 to provide reliable sources of backup power. The first petition (PRM–50–65) requested that NRC adopt regulations that would require facilities licensed by NRC under 10 CFR parts 30, 40, 50, and 70 to be Y2K compliant. The second petition (PRM–50–66) requested that NRC adopt regulations that would require facilities licensed by NRC under 10 CFR part 50 to develop and implement adequate contingency and emergency plans to address potential system failures. Because of the nature of these petitions and the date-specific issues they address, the petitioner requested that the petitions be addressed on an expedited schedule.

On January 25, 1999, NRC published a notice of receipt of a petition for rulemaking in the **Federal Register** (64 FR 3789). It was available on NRC's rulemaking website and in the NRC Public Document Room. The notice of receipt of a petition for rulemaking invited interested persons to submit comments by February 24, 1999.

The Petition

The petitioner requested that NRC adopt the following text as a rule:

The Nuclear Regulatory Commission recognizes that date-sensitive computer programs, embedded chips, and other electronic systems that perform a major role in distributing, allocating, and ensuring electric power throughout the United States may be prone to failure beginning on January 1, 2000. Loss of all alternating current electricity from both the offsite power grid and onsite emergency generators (commonly known as ''station blackout'') long has been identified by NRC as among the most prominent contributors to risk for atomic reactors.

(1) For these reasons, NRC requires of part 50 and 70 licensees as of December 1, 1999:

(a) that all emergency diesel generators that provide backup power to nuclear licensees must be operational and remain operational; (b) that licensees that cannot demonstrate full operational capabilities of all emergency diesel generators must close until such time that full operational capabilities of emergency diesel generators are attained; (c) that all licensees must have a 60-day supply of fuel for emergency diesel generators.

(2) Further, to ensure adequate protection of public health and safety, NRC requires that all licensees under these sections must provide alternate means of backup power sufficient to assure safety. These may include, but are not limited to: solar power panels, wind turbines, hydroelectric power, biomass power, and other means of generating electricity. These additional backup systems must provide electricity directly to the licensee rather than to the broader electrical grid.

(3) Irradiated fuel pools are to be immediately classified as Class 1–E; backup power systems must be sufficient to provide cooling for such pools. Licensees which cannot demonstrate compliance with sections (1) and (2) must cease operations as of December 1, 1999, until compliance with these sections is attained.

The petitioner acknowledged that NRC has recognized the potential safety and environmental problems that could result if date-sensitive electronic systems fail to operate or provide false information. The petitioner asserted that NRC has required its licensees of reactor and major fuel cycle facilities to report by July 1, 1999, on their programs to ensure compliance with Y2K issues.

The petitioner discussed the ''availability of electricity to power atomic reactor and other nuclear facility safety systems.'' The petitioner explained that electricity is required to operate atomic reactor safety and cooling systems and that this electricity is provided by offsite sources (overall an electrical grid). The petitioner commented that NRC has long recognized that the loss of all alternating current from both onsite and offsite systems, known generally as ''station blackout,'' is the most important contributor to risk at most atomic reactors. The petitioner correctly noted that NRC has required licensees to have backup sources of onsite emergency power, normally multiple emergency diesel generators, capable of supplying the electricity necessary to operate essential safety systems.

The petitioner asserted that the emergency diesel generators (EDGs) used at atomic reactors have proven unreliable and are often out of service. The petitioner claimed that the unprecedented condition posed by the Y2K problem, coupled with the demonstrated and ongoing failures of EDGs, constitutes reasonable doubt that EDGs can be relied on. Therefore, the petitioner believes that NRC should adopt regulations that require that licensees have all EDGs operational during the Y2K transition, that they have a 60-day supply of fuel as of December 1, 1999, and that licensed facilities that cannot meet these requirements be closed.

The petitioner discussed the likelihood and the potential consequences of a failure of all or a portion of the electric power grid in the United States. The petitioner recognized that the failure of all or a portion of the electrical grid as a result of Y2K issues is well beyond the scope of NRC's authority. However, the petitioner stated that the extended failure of all or a portion of the electrical grid would place severe stress on the current EDG system of backup power supply and that the failure of EDGs at one or more reactor sites could result in extended station blackouts and nuclear catastrophes. The petitioner asserted that this possibility is well within the range of probabilities for which NRC routinely requires action by its licensees. The petitioner further asserted that reliance on unreliable EDGs is insufficient under these conditions. Therefore, the petitioner believes that it is essential that NRC take the regulatory action suggested in this petition on an expedited basis.

Public Comments on the Petition

In response to the petition, NRC received 73 comment letters, which included 1 letter signed by 25 citizens of the State of Michigan, 3 letters from nuclear associated industries, 10 letters from utilities, 14 letters from private organizations, and 45 letters from private citizens.

Fifty-six letters supported the petition, of which 41 were from private citizens, 14 were from private organizations, including 1 from the NIRS and 1 signed by 25 individuals. The comments supporting the petition addressed the concern that diesel generators are unreliable and that a reliable electric power grid is needed.

In some of the letters supporting the petition, the authors included the following additional comments that provide information or requested action that was not contained in the petition. These comments noted that—

1. Y2K may increase the possibility of local, regional or widespread blackouts. Losing all electric power to the station is called station blackout. EDGs, each capable of powering the entire plant, compensate for the loss of off-site electric power. Reliability of diesel generators is considerably lower than required and, moreover, one of two diesel generators is often out of service. Therefore, for Y2K, an additional source of backup power needs to be provided, and both EDGs should be operable with sufficient fuel on site to compensate for fuel delivery problems.

2. In order to ensure that sufficient electric power is available during an extended loss of offsite power to safely shut down a nuclear plant and cool the spent fuel pool, enough diesel fuel should be available at the site for periods extending from 60 days to 160 days to whatever the time period that offsite power is not available.

3. An additional power source or method should be available during power failure to provide makeup water to the spent fuel pool.

4. On at least one occasion, a nuclear power plant licensee falsified data relative to the reliability of EDGs. The concern is that other nuclear utilities may not provide reliable data for their EDGs to NRC. These comments are addressed specifically in the discussion of ''Reasons for Denial.''

Seventeen letters opposed the petition, including 4 from private citizens, 3 from nuclear associated industries, and 10 from utilities. Comments opposing the petition stated that onsite emergency electric power generators are already required to be maintained in a state of readiness and validated by periodic testing, fuel supplies are maintained at a level adequate to facilitate appropriate response/recovery actions, and the current regulations and license conditions are adequate to address the issue. One commenter used a specific facility as an example to demonstrate that in the highly unlikely event of a total loss of electrical power (meaning the loss of the electric grid and backup power) the conditions at that facility would not threaten public health and safety. Any potential adverse impacts would be limited to work areas and equipment within the facility, and there would be no catastrophic or significant loss of control or containment of nuclear material. That commenter indicated that the provision of a tertiary (meaning a secondary backup) source of electric power to its fuel facility, which would be independent of the broader electric grid, as would be required under PRM–50–67, is an unreasonable requirement that would force shutdown of the facility on December 1, 1999, in the absence of any significant credible safety risk.

Reasons for Denial

NRC is denying the petition because the Commission has determined that

current NRC regulations and license conditions governing power systems at part 50 and 70 facilities provide reasonable assurance of adequate protection to public health and safety, and licensees are taking appropriate actions to provide reasonable assurance that Y2K problems will not adversely affect the functioning of these power systems. The NRC is reviewing the licensees' implementation of these Y2K activities and will have sufficient time to take appropriate regulatory action if licensees' Y2K activities and programs are not properly implemented in a timely fashion. NIRS does not explain why the licensees' Y2K activities and programs, and NRC's oversight of the licensees' implementation of these activities and programs, are inadequate such that the rule proposed by NIRS is necessary to provide reasonable assurance of adequate protection from Y2K-induced unavailability of onsite power systems.

NIRS' proposed rule contained three separate requirements for Part 50 and Part 70 licensees: (1) Operational demonstration of EDGs and provision of a 60-day diesel fuel supply; (2) alternate means of backup power; and (3) classification of fuel pools as Class 1–E. Facilities that cannot demonstrate compliance with these requirements by December 1, 1999, would be required to shut down until they could demonstrate compliance. The proposed requirements are addressed below for part 50 power reactors, part 50 decommissioning reactors, part 50 non-power reactors, and part 70 licensees in Sections I, II, III, and IV, respectively.

I. Part 50 Nuclear Power Plants

A. Diesel Generator Operational Capability and Sixty-Day Fuel Supply

Nuclear power plants must be protected against loss of offsite power (LOOP) by providing an onsite backup power system by either 10 CFR part 50, Appendix A, General Design Criteria (GDCs) 17 and 18, or equivalent requirements in the plant's licensing basis. Most licensees rely upon diesel generators to provide onsite backup power, although there is at least one licensee that relies upon hydroelectric power. All licensees have committed to provide an onsite supply of fuel to operate diesel generators; most commitments are for a 7-day supply. In addition, nuclear power plants are required by 10 CFR 50.63 to have the capability to withstand loss of all ac power (generally referred to as ''station blackout'' [SBO]) for an established period of time. As indicated in Section I.A.2 there is no reason to believe that Y2K would significantly affect the probability or duration of a LOOP and/or a SBO from that otherwise assessed in a licensee's coping analysis required by 10 CFR 50.63. To demonstrate that their plants can cope with SBO, some licensees rely upon an alternate ac power source(s) (separate from the backup power system) that utilizes diesel generators or gas turbine generators.

1. EDG Reliability

NIRS claims that EDGs have proven to be unreliable, such that licensees should be required to demonstrate ''full operational capability'' [1] of EDGs that provide backup power. As previously noted, backup onsite power is usually provided by diesel generators, which supply electric power to the plant safety systems upon a LOOP. NRC regulations require that onsite electric power supplies and the onsite electric distribution system have sufficient independence, redundancy, and testability to perform their safety functions assuming a single failure. Furthermore, in accordance with their license conditions, all licensees are required to have backup electricity sources operational to supply safety-related equipment at all times independent of circumstances such as Y2K-induced LOOP. The operation and maintenance of diesel generators and other safety-related equipment necessary for the safe shutdown of the reactor are controlled by the plant technical specifications (TSs). The TSs are intended to ensure that sufficient power will be available to supply safety-related equipment at all times regardless of key Y2K dates. Moreover, the plant TSs require that immediate action be taken to restore inoperable diesel generators to operable status. The plant TSs require the diesel generators to be tested routinely in order to demonstrate their operability and their ability to supply power as needed.

NIRS did not present any information demonstrating that diesel generators are unreliable such that they should not be relied upon to provide backup power upon a LOOP. For each nuclear power plant, selected target diesel generator reliability values were established for plant-specific coping analysis in accordance with the requirements of 10 CFR 50.63, the SBO rule. Availability and reliability values are tracked by each licensee in accordance with the requirements of 10 CFR 50.65, the maintenance rule, and associated industry guidance.

In the resolution of Generic Safety Issue B–56, ''Diesel Generator Reliability,'' one of the options recommended by NRC staff was to revise the SBO rule to include specific requirements for demonstrating diesel generator reliability. However, in SECY–93–044, ''Resolution of Generic Safety Issue B–56, Diesel Generator Reliability,'' dated March 25, 1993, the Commission disapproved the revision to the SBO rule on the basis of the real progress made by the nuclear industry in improving the reliability of the diesel generators. NRC requirements and industry activities have resulted in a very high diesel generator reliability. In 1993, the industry-wide average reliability of diesel generators was in excess of 98 percent. An Idaho National Engineering Laboratory study (INEL–95–0035, ''Emergency Diesel Generator Power System Reliability: 1987–1993'') of a number of nuclear power EDG reliability concluded that those plants with a 0.950 reliability target goal were actually demonstrating 0.987, and the plants with a 0.975 reliability target goal were actually demonstrating 0.985. The Commission stated that the industry should continue an aggressive program of maintenance as well as root cause analysis that will continue to offer assurance that diesel generator reliability will be maintained at a satisfactory level in the future.

All licensees have implemented a maintenance monitoring program consistent with the maintenance rule, which became effective on July 10, 1996. Licensees are required to monitor the performance of diesel generators against the established goals and to take appropriate corrective actions if the goals are not met. The maintenance rule requires that these goals be evaluated by the licensees at least every refueling cycle, not to exceed 2 years. To evaluate the process established by licensees to set goals and monitor them, and to verify that preventive maintenance has been effective for systems and components under the maintenance rule, NRC staff conducted baseline inspections of all nuclear plants during 1996–1998. At several plants, diesel generators were among the systems and components reviewed to verify that goals were established and monitoring and trending were being performed. For pilot plants, diesel generators continue to be inspected and evaluated using the risk-informed, performance-based inspection process, which is part of the

[1] The NRC assumes that by ''capability,'' NIRS actually means ''reliability'' because ''capability'' normally refers to the ability of the emergency power system to power safety related electrical loads at the plant; whereas reliability normally refers to the actual performance of the system in terms of availability, which is what NIRS addresses in its petition.

NRC Oversight Baseline Inspection Program. NRC staff will continue to assess the reliability of diesel generators at nuclear power plants to ensure that the reliability of diesel generators is maintained at levels specified by each licensee when it performed its plant-specific coping analyses for SBO.

Additionally, the scope of licensees' Y2K programs, including contingency planning, covers the onsite power and other emergency power systems at the plant. NRC audits and reviews of licensee Y2K program activities to date have verified licensee consideration of these systems, and no associated Y2K issue relating to onsite power systems have been identified.

The NRC does not believe, on the basis of current information from the North American Electric Reliability Council (NERC),[2] that availability of offsite power from the electrical grid is likely to be significantly affected by Y2K-induced problems. In its most recent reports issued on January 11 and April 30, 1999, NERC states, ''Transmission outages are expected to be minimal and outages that may occur are anticipated to be mitigated by reduced energy transfers established as part of the contingency planning process.'' Both reports indicate that the transition through critical Y2K rollover dates should have a minimal impact on electric systems operations in North America and that widespread, long-term loss of the grid as a result of Y2K-induced events is not a credible scenario. Therefore, there is no reason to believe that Y2K would significantly affect the probability or duration of a LOOP and/or a SBO from that otherwise assessed in the licensee's coping analysis required by 10 CFR 50.63.

As discussed above, the diesel generators and associated onsite power supply systems, being within the scope of licensees' Y2K readiness programs, will be Y2K ready prior to the Y2K transition, and no decrease in reliability of the diesel generators is expected. The information provided by NERC indicates that the likelihood of a LOOP is not expected to increase significantly during Y2K transition. Based on these considerations, plus the ability of the plants to cope with a station blackout, the likelihood of an event that will jeopardize public health and safety is acceptably low.

One of the public comments received by NRC in response to the petition indicated a concern regarding falsification of EDG reliability data by licensees. This particular concern has been investigated and resolved as documented in an NRC memorandum dated December 20, 1993, from the Office of Investigations to the Region II Regional Administrator, ''Vogtle Electric Generating Plant: Alleged False Statements Regarding Test Results on Emergency Diesel Generators (Case No. 2–90–020R).'' Falsification of EDG failure data by licensees is not considered by NRC as an industry-wide, generic occurrence. Such incidents, when identified, will continue to be treated by NRC on a case-by-case basis and appropriate actions will be taken in response.

2. Sixty-day fuel supply

NIRS' proposed rule would require each nuclear power plant licensee to have a 60-day onsite supply of fuel for diesel generators, as opposed to a 7-day fuel supply to which most licensees have committed. However, NIRS provided no technical basis why offsite power from the grid would not be reestablished within the 7-day period accommodated by existing onsite fuel supplies. Nor did NIRS explain why, should a LOOP continue for longer than 7 days, a licensee would be unable to resupply diesel fuel for a period of 60 days so that a 60-day fuel supply must be maintained onsite. Commenters on the NIRS petition who suggested a requirement for a larger fuel supply (able to accommodate 160 days of operation without resupply) also did not provide any technical bases for their recommendations. As stated previously, the likelihood or duration of a LOOP is not expected to be significantly affected by the Y2K issue.

Furthermore, the NRC licensees are taking appropriate actions to ensure that their plants will be able to cope with Y2K-induced LOOP durations longer than 7 days. As part of each plant's Y2K activities, each licensee is preparing a contingency plan, which includes obtaining diesel fuel and other necessary supplies to cope with Y2K-induced long-term LOOP events. As part of NRC's review of licensees' implementation of their Y2K programs, NRC will confirm that licensee Y2K programs address emergency power sources, arrangements for obtaining critical commodities (e.g., EDG fuel oil) and other considerations for contingency planning identified in Nuclear Energy Institute/Nuclear Utilities Software Management Group (NEI/NUSMG) 98–07, ''Nuclear Utility Year 2000 Readiness Contingency Planning,'' dated August 1998.

The capability of diesel generators and the adequacy of existing fuel supplies have been demonstrated at numerous plants during weather-induced interruptions of the power grid and other cases of LOOP from the grid. An example is the Turkey Point nuclear plant LOOP event during the August 1992 Hurricane Andrew when the diesel generators automatically picked up safety-related loads and maintained the plant for an extended period (over 6 days) during the recovery until site power was restored. NRC considers the current 7-day fuel capacity to be sufficient to operate diesel generators for longer than the time that it takes to replenish the onsite supply from outside sources. Accordingly, a rule requiring licensees to maintain sufficient fuel to operate their diesel generators for a 60-day period or longer is not necessary to provide reasonable assurance of adequate protection against Y2K-induced LOOP events. The regulation requires nuclear power plants to withstand LOOP events regardless of whether the LOOP is due to Y2K or other causes. The petitioner has not demonstrated that Y2K would significantly affect the probability or duration of loss of all alternating current power from that otherwise assumed in the licensee's coping analysis required by 10 CFR 50.63, and the licensees' coping analyses continue to be applicable during the period that NIRS claims would present an increased susceptibility to a LOOP.

B. Additional Alternate Means of Backup Power

NIRS' petition requests NRC to require all licensees to provide an alternate (second) means of backup power, such as solar power panels, wind turbines, hydroelectric power, and biomass power. The petition also requests NRC to require that the alternate backup power system provide electricity directly to the licensee rather than to the broader electrical grid.

1. Need for Additional Backup Power Source

As discussed in Section I.A.1 above, not only must licensees provide a source of backup power upon a LOOP, some licensees have provided an alternate ac power source in order to demonstrate that they are able to cope with a LOOP concurrent with a loss of onsite backup power (an SBO) for a specified duration. Thus, these licensees have three sources of power: (1) Offsite

[2] NERC is an electric industry organization made up of 10 Regional Reliability Councils that account for nearly every bulk electric supply and delivery organization in the interconnections of North America. NERC and its Regional Reliability Councils set operating and engineering standards for the reliability of electric systems in North America. In May 1998, U.S. Department of Energy requested NERC to facilitate the electric industry's Y2K effort.

power from two independent circuits; (2) onsite backup power from independent, redundant power supplies; and (3) alternate ac power. The NRC does not believe that the NIRS' proposal for a fourth source of power (''alternative backup power,'' in the words of NIRS) is necessary to provide reasonable assurance of adequate protection against Y2K-induced problems.

The petitioner does not explain why Y2K would affect diesel generators as a source of backup and/or alternate ac power, such that a source of power *in addition* to diesel generators is necessary to address SBO. The scope of the licensees' Y2K program covers both the onsite backup and the alternate ac power systems at nuclear power plants. Since 1996, NRC has been working with the nuclear industry and licensees of operating nuclear power plants in order to achieve Y2K readiness at all nuclear power plants. NRC has issued Information Notice (IN) 96-70, ''Year 2000 Effect on Computer System Software,'' on December 24, 1996; Generic Letter (GL) 98–01, ''Year 2000 Readiness of Computer Systems at Nuclear Power Plants,'' on May 11, 1998; and GL 98–01, Supplement 1, ''Year 2000 Readiness of Computer Systems at Nuclear Power Plants,'' on January 14, 1999.

NRC issued IN 96–70 to alert nuclear power plant licensees of the Y2K problem. The information notice described the potential problems that nuclear power plant computer systems and software may encounter during and following the transition into the year 2000 and how the Y2K issue may affect NRC licensees. IN 96–70 encouraged licensees to examine their uses of computer systems and software well before the year 2000 and suggested that licensees consider appropriate actions for examining and evaluating their computer systems for Y2K vulnerabilities.

In GL 98–01, NRC endorsed the guidance in the industry document issued by the NEI/NUSMG 97–07, ''Nuclear Utility Year 2000 Readiness,'' when properly augmented in the area of risk management, contingency planning, and remediation of embedded systems, as one possible approach in implementing a plant-specific Y2K readiness program. In August 1998, NEI issued an industry document, NEI/NUSMG 98–07, which provided additional guidance in the area of internal and external risk management and contingency planning. External events that should be considered for facility-specific contingency planning include electric grid/transmission/distribution system events (e.g., a LOOP, grid instability and voltage fluctuations, load fluctuations and loss of grid control systems), loss of emergency plan equipment and services, loss of essential services, and depletion of consumables. The NRC considers the guidance in NEI/NUSMG 98–07, when properly implemented, as an acceptable approach to mitigate and manage Y2K-induced events that could occur on Y2K-critical dates.

In GL 98–01, NRC requested that all operating nuclear power plant licensees submit written responses regarding their facility-specific Y2K readiness programs in order to obtain confirmation that licensees are addressing the Y2K problem effectively. All licensees have responded to GL 98–01, stating that they have adopted plant-specific programs that are intended to make the plants Y2K ready by July 1, 1999. GL 98–01 also requests a written response, no later than July 1, 1999, confirming that these facilities are Y2K ready, including contingency planning. Licensees who are not Y2K ready by July 1, 1999, must provide a status report and schedule for the remaining work to ensure timely Y2K readiness.

As part of its oversight of licensee Y2K activities, the NRC staff conducted sample audits of 12 plant-specific Y2K readiness programs. The objectives of the audits were as follows:

1. To assess the effectiveness of licensee programs for achieving Y2K readiness and in addressing compliance with the terms and conditions of their license and NRC regulations and continued safe operation.

2. To evaluate program implementation activities to ensure that licensees are on schedule to achieve Y2K readiness in accordance with GL 98–01 guidelines.

3. To assess the licensee contingency planning for addressing risks associated with events resulting from Y2K problems.

NRC staff determined that this approach was an appropriate means of oversight of licensee Y2K readiness efforts because: (1) All licensees had committed to the nuclear power industry Y2K readiness guidance (NEI/NUSMG 97–07) in their first response to NRC GL 98–01; and (2) the audit would verify that licensees were effectively implementing the guidelines. The sample of 12 licensees included large utilities such as Commonwealth Edison and Tennessee Valley Authority, as well as small single-unit licensees such as North Atlantic Energy (Seabrook) and Wolf Creek Nuclear Operating Corporation. NRC staff selected a variety of types of plants of different ages and locations in this sample in order to obtain the necessary assurance that nuclear power industry Y2K readiness programs are being effectively implemented and that licensees are on schedule to meet the readiness target date of July 1, 1999, established in GL 98–01.

In late January 1999, NRC staff completed the 12 audits. On the basis of the audit observations, NRC staff has concluded that licensees are effectively addressing Y2K issues and are undertaking the actions necessary to achieve Y2K readiness in accordance with the GL 98–01 target date, although some plants will have some remediation, testing, and final certification scheduled for the fall 1999 outage. NRC staff did not identify any issues that would prevent these licensees from achieving readiness.

The NRC staff is not aware of any Y2K problems in nuclear power plant systems that directly affect actuation of safety functions, including the emergency onsite power systems. Moreover, NRC audit results to date have not identified any associated residual Y2K problems with the emergency onsite power system and have confirmed the licensees' consideration of these systems. Also, the audits did not identify any Y2K problem in safety-related activation systems.

Additionally, the NRC's regional staff reviewed Y2K activities at all operating nuclear power plants to verify the status of licensee efforts to ensure that all plants will be able to function safely on January 1, 2000, and beyond. These reviews: (1) Verified that all NRC licensees have implemented Y2K program activities; (2) evaluated the progress made to ensure that the licensees are on schedule to achieve Y2K readiness; and (3) assessed licensees' contingency plans for addressing Y2K-related issues. The reviews were completed by July 1999.

The NRC staff audited the contingency planning efforts of six licensee facilities. The audits at these facilities examined in detail backup measures the utilities have in place to deal with possible Y2K problems, either on site or off site, that might affect plant operations. The audits were conducted in May and June 1999.

The reviews and audits will allow NRC staff to verify the progress of all licensees and determine whether any regulatory action is needed. Information from the reviews will be used in conjunction with the status reports that NRC has required its nuclear power plant licensees to provide by July 1, 1999. By July 1, 1999, all licensees responded to GL 98–01, Supplement 1.

The responses indicated that 68 plants are Y2K ready and 35 plants need to complete work on computer systems or devices after July 1, 1999.

NIRS presents no information or argument why these actions by the licensees, the nuclear industry, and NRC are not sufficient to ensure that onsite back up and alternate ac power systems will not be adversely affected by Y2K-induced problems.

2. Specific Backup Power Sources Proposed by NIRS

The petitioner's proposed alternative backup power sources, such as solar and wind, are not reliable backup power sources because of their undependability under unpredictable weather conditions or because they are limited by the amount of power they can generate. Additional comments received by the NRC in response to the petition also suggested the requirement for alternate power. The petitioner does not provide sufficient technical information to demonstrate that these additional alternative backup power sources would add more reliability than current backup power sources. Therefore, most of the sources of alternative backup power that are included in NIRS' proposed rule would not constitute an acceptable alternative source of backup power with the same level of availability and capability as diesel generators.

C. Spent Fuel Pool Class 1E Classification and Backup Power

The proposed rule would require all part 50 licensees to immediately classify irradiated (spent) fuel pools as Class 1–E and provide sufficient backup power to provide cooling to these pools. Because Class 1–E is an electric system classification, the NRC assumes that the petitioner intends the rule to require that the backup power supply for spent fuel pool cooling systems be classified as Class 1–E.

The petitioner does not explain why classification of the electric power system for spent fuel pool cooling systems as Class 1–E is necessary to protect spent fuel pools against a Y2K-induced LOOP. The Class 1–E classification addresses design and quality assurance (QA) requirements for manufacture and installation of electrical system components. Most of these systems are based upon analog controls and, therefore, are not subject to Y2K problems. Furthermore, simple reclassification of the electrical power system by itself would not appear to have any direct effect on minimizing Y2K-induced loss of power necessary for spent fuel cooling. Rather, an evaluation of the power system for Y2K susceptibility is necessary, which is what licensees have committed to implement. Thus, it is unclear how the requested requirements in the NIRS petition would provide assurance that Y2K problems will not prevent electrical power systems from performing their necessary safety functions. The NRC concludes that a rule change is not necessary since licensees are already directly addressing spent fuel pool cooling as part of their Y2K programs.

Furthermore, the NRC does not agree that a backup source of electrical power for spent fuel cooling is necessary at nuclear power plants in order to provide reasonable assurance of adequate protection. At most operating nuclear power plants, the emergency onsite power system can directly supply electric power to its spent fuel pool cooling systems. At those plants at which the spent fuel cooling system is not directly connected to the emergency onsite power system, the capability exists of connecting the cooling system to the emergency onsite power system. Requiring a backup (tertiary) source of electrical power is not justified in view of the length of time between loss of spent fuel cooling and the point at which there is a significant threat to integrity of the spent fuel rods. A licensee is required to keep the spent fuel pool filled to a level more than 23 feet above the top of the fuel rods and, generally, the water temperature in the pool is to be maintained below 140 °f. For a typical pool with a capacity of about 400,000 gallons and a worst case heat load causing 50 gpm of water loss as a result of evaporation, it would take about 3 days for the pool level to drop to the top of the fuel racks. This estimate does not include the heat-up time of 3 to 4 hours for the pool water to increase from 140 °f to 212 °f. This scenario assumes a total loss of all ac electric power and that no corrective actions are taken for 3 days in response to the decreasing water level in the spent fuel pool. For a typical heat load (non-refueling), the time to uncovering of the spent fuel pool would be around 2 weeks, again assuming that no make-up water is added to the pool. Upon loss of water shielding, the radiation levels above the pool would increase. Assuming LOOP and failure of onsite emergency power sources, the only action necessary would be to provide make-up water to the spent fuel pool. The existing plant operating/emergency procedures provide for initiation of make-up water to the pool upon detection of low level. At many plants, the make-up water supply is provided by a plant safety system. Upon loss of all ac power, make-up water from any source, such as fire hoses supplied by diesel-driven fire pumps, can be used to maintain the required water level in the pool. In light of the substantial period of time available for a licensee to take mitigative actions upon loss of spent fuel pool electrical power, the NRC concludes that providing an additional backup source of power is not warranted at any operating nuclear power plant.

II. Part 50 Decommissioning Nuclear Power Plants

There are 21 permanently shutdown nuclear power plants which have been shut down for more than a year. Six of these facilities have removed all spent fuel from the site. Therefore, there are only 15 decommissioning power plants to which the proposed requirements in the petition would potentially apply.

Spent fuel pool cooling and support systems may be configured differently for decommissioning plants than for operating reactors due to the reduced need for decay heat removal at decommissioning plants. As decay heat loads drop, utilities are able under 10 CFR 50.59 to remove equipment from service once it no longer is needed to provide its safety function. At some plants there is no need for forced circulation to remove heat from the pool as adequate heat loss to ambient keeps the pool at an acceptable temperature. After a period of decay in the spent fuel pool, the heat load from spent fuel is significantly reduced as short-lived fission products decay. Consequently, the potential for boiling is reduced and the time available for the licensee to take mitigative action is greater. With the exception of Zion and Big Rock Point, more than three years has elapsed since any fuel was irradiated in the reactor at any of the nuclear power plants currently undergoing decommissioning.

The reasons discussed in Section I.C above regarding why electrical systems need not be classified Class 1-E for spent fuel pools at operating nuclear power plants also apply equally to decommissioning nuclear power plants. As previously noted, requiring a backup source of electrical power is not justified in view of the length of time between loss of spent fuel cooling and the point where there is a significant threat to integrity of the spent fuel rods. Upon loss of all ac power, make-up water from any source, such as fire hoses supplied by diesel-driven fire pumps, can be used to maintain the required water level in the pool.

In view of the long time period available for the licensee to respond to loss of power to the spent fuel pool cooling system and the relative simplicity of mitigative actions, the requirements proposed by NIRS with respect to spent fuel pool electrical system reclassification and the provision of alternative power are not justified.

III. Part 50 Non-Power Reactor Licensees

Non-power reactors operate at power levels ranging from 250 KWt to 2 MWt, and they operate at low temperatures. Any non-power reactor in operation on January 1, 2000, can be readily shut down manually using emergency procedures and existing shutdown systems. These reactors have passive safety features and generally do not require power to shut down and dissipate decay heat. Accordingly, NRC regulations do not currently require part 50 non-power reactors to provide a backup power source.

NIRS did not present any information or rationale why part 50 non-power reactors must provide an ''alternate'' source of backup power to address Y2K losses of power. In particular, NIRS did not address the fact that these facilities are not required to have a backup power source because power is not required to shut down and maintain these facilities in a safe-shutdown condition. In the absence of any rationale in support of the proposed requirement, the Commission concludes that there is no basis for adopting the proposed requirement for part 50 non-power reactor licensees.

IV. Part 70 Licensees

To alert major part 70 licensees of the Y2K problem, NRC issued Information Notice (IN) 96–70 in December 1996, and IN 98–30 in August 1998. In IN 96–70, NRC staff described the potential Y2K problems, encouraged licensees to examine their uses of computer systems and software well before the year 2000, and suggested that licensees consider appropriate actions to examine and evaluate their computer systems for Y2K vulnerabilities. In IN 98–30, NRC staff provided definitions of ''Y2K ready'' and ''Y2K compliant,'' encouraged licensees to contact vendors and test their systems for Y2K problems, and described elements of a Y2K readiness program.

In order to gather Y2K information regarding materials and major fuel cycle facilities, NRC formed a Y2K Team within the Office of Nuclear Material Safety and Safeguards (NMSS) in 1997. From September through December 1997, this NMSS Y2K Team visited a cross-section of materials licensees and fuel cycle facilities and conducted Y2K interviews. Each licensee or facility visited by the team indicated that it was aware of the Y2K issue and was in various stages of implementing its Y2K readiness program.

On June 22, 1998, the NRC staff issued Generic Letter (GL) 98–03, ''NMSS Licensees and Certificate Holders' Year 2000 Readiness Programs,'' requested major part 70 licensees to inform NRC of the status of their Y2K readiness programs. In GL 98–03, the NRC staff requested all major part 70 licensees to submit by September 20, 1998, written responses regarding their facility-specific Y2K readiness program in order to confirm that they were addressing the Y2K problem effectively. All licensees responded to GL 98–03 by stating that they had adopted a facility-specific Y2K readiness program, and the scope of the program included identifying and, where appropriate, remediating embedded systems, and provided for risk management and the development of contingency plans. GL 98–03 also requested a written response, no later than December 31, 1998, which confirmed that these facilities were Y2K ready or provided a status report of work remaining to be done to become Y2K ready, including completion schedules. All licensees provided a second response to GL 98–03, which provided reports of work to be done, including completion schedules. Furthermore, following the second response, NRC requested a third written response, no later than July 1, 1999, which would confirm that these facilities were Y2K ready or would provide an updated status report.

Between September 1997 and October 1998, the major fuel cycle facilities were also asked Y2K questions during other inspections. On the basis of these Y2K inspections, the licensees were aware of the Y2K problem and were adequately addressing Y2K issues. There have been no identified risk-significant Y2K concerns for major part 70 licensees.

NIRS presents no information or argument why these above-mentioned actions by the licensees and NRC are not sufficient to address Y2K problems and provide reasonable assurance of adequate protection during the transition from 1999 to 2000.

EDG Reliability and Fuel Supply

The requirements proposed in the NIRS petition would require that: (1) All EDGs that provide backup power be operational and (2) licensees have a 60-day supply of fuel for EDGs or the facility would be shut down. The petitioner indicated these requirements are necessary to protect public health and safety. However, there are no part 70 licensees required to have EDGs in order to provide backup power to protect public health and safety. In the event of the loss of electric power in part 70 facilities, processing stops and there is no need for electric power to maintain a safe condition. There are some part 70 licensees who have independent power sources in order to meet physical protection (PP) requirements. These licensees are also required to have contingency plans for PP (e.g., augmented guard force) in the event of loss of independent power. Based on the above discussion, the 60-day fuel supply requirement is also not needed for part 70 licensees to provide reasonable assurance of adequate protection to public health and safety.

The petitioner does not provide sufficient technical information to demonstrate that part 70 licensees must shut down if they do not have EDGs providing backup power or must have a 60-day fuel supply for EDGs.

Additional Alternate Means of Backup Power

NIRS asserted that NRC must require licensees to provide alternate means of backup power (e.g., solar power panels, wind turbines, hydroelectric power, biomass power). As stated above, it is not necessary for part 70 licensees to have backup power in order to shutdown to a safe condition. Also, part 70 licensees who are required to have independent power sources to meet PP requirements have contingency plans to meet the loss of the back-up power. Further, the petitioner does not provide sufficient technical information to demonstrate that these alternative back-up power sources are needed to to provide reasonable assurance of adequate protection to public health and safety.

Back-up Power Supply for Spent Fuel Pool Cooling System

The proposed rule in the NIRS petition requests NRC to require that all licensees immediately classify irradiated fuel pools as Class 1–E, and provide sufficient back-up power to provide cooling to these pools. Because Class 1–E is an electric system classification, the NRC staff assumes that the petitioner intends the rule to apply to the back-up power supply for spent fuel pool cooling systems. Although some part 70 licensees have irradiated fuel at their facilities, these facilities do not store large quantities of irradiated fuel. The irradiated fuel is

used for research and development or educational purposes. If the irradiated fuel is stored in a pool, the heat generated from the fuel would be minimal and would not require a pool cooling system.

The petitioner provides no technical justification to support the proposal that spent fuel pools be immediately classified as Class 1–E. The regulatory action requested by NIRS is not required for part 70 licensees.

Conclusion

Existing NRC requirements, licensee commitments, and licensee activities and programs are sufficient to cope with losses of power, including those losses of offsite power that could be caused by Y2K problems. NIRS has not presented any information either that existing requirements and licensee commitments are inadequate to address losses of power due to Y2K problems, such that the requirements proposed in NIRS' petition are necessary to provide reasonable assurance of adequate protection to public health and safety. Accordingly, the Commission denies the petition.

Dated at Rockville, Maryland, this 17th day of August, 1999.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 99–21752 Filed 8–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG 37

List of Approved Spent Fuel Storage Casks: (NAC–MPC) Addition

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to add the NAC International Multi-Purpose Canister (NAC–MPC) cask system to the List of approved spent fuel storage casks. This amendment will allow the holders of power reactor operating licenses to store spent fuel in the NAC–MPC cask system under a general license.

DATES: The comment period expires November 8, 1999. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Hand deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (http://ruleforum.llnl.gov). This site provides the availability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received by the NRC, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Stan Turel, telephone (301) 415–6234, e-mail, spt@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires, ''for the dry storage of spent nuclear fuel at civilian power reactor sites, with the objective of establishing one or more technologies the (Nuclear Regulatory) Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, ''(t)he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license, publishing on July 18, 1990, a final rule in 10 CFR part 72 entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181). This rule also established a new subpart L within 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' containing procedures and criteria for obtaining NRC approval of dry storage cask designs.

Discussion

This proposed rule would add the NAC International Multi-Purpose Canister (NAC–MPC) cask system to the list of NRC-approved casks for spent fuel storage in 10 CFR 72.214. Following the procedures specified in 10 CFR 72.230 of Subpart L, NAC International (NAC) submitted an application for NRC approval with the Safety Analysis Report (SAR): ''Safety Analysis Report for the NAC Multi-Purpose Canister System (NAC–MPC), Revision 2.'' The NRC evaluated the NAC submittal and issued a preliminary Safety Evaluation Report (SER) on the NAC SAR and proposed Certificate of Compliance (CoC) for the NAC–MPC cask system on August 9, 1999.

The NRC is proposing to approve the NAC–MPC cask system for storage of spent fuel under the conditions specified in the proposed CoC. This cask system, when used in accordance with the conditions specified in the CoC and NRC regulations, will meet the requirements of 10 CFR part 72; thus, adequate protection of the public health and safety would be ensured. This cask system is being proposed for listing under 10 CFR 72.214, ''List of approved spent fuel storage casks,'' to allow holders of power reactor operating licenses to store spent fuel in this cask system under a general license. The CoC would terminate 20 years after the effective date of the final rule listing this cask in 10 CFR 72.214, unless the cask system's CoC is renewed. The certificate contains conditions for use which are specific for this cask system and addresses issues such as operating procedures, training exercises, and spent fuel specification.

The proposed CoC for the NAC–MPC cask system and the underlying preliminary SER, dated August 9, 1999, are available for inspection and comment at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the proposed CoC and preliminary SER may be obtained from Stan Turel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6234, email spt@nrc.gov.

Discussion of Proposed Amendments by Section

Section 72.214 List of approved spent fuel storage casks.

Certificate Number 1025 would be added indicating that:

(1) The title of the SAR submitted by NAC International is ''Final Safety Analysis Report for the NAC Multi-Purpose Canister System (NAC–MPC System)'';

(2) The certificate expiration date would be 20 years after final rule effective date; and

(3) The model number affected is NAC–MPC.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in subpart A of 10 CFR part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule is mainly administrative in nature. It would not have significant environmental impacts. The proposed rule would add the NAC–MPC cask system to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals by the NRC. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Stan Turel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415–6234, email spt@nrc.gov.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA) or the provisions of the Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

If a means to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would add the NAC–MPC cask system to the list of NRC approved casks for spent fuel storage in 10 CFR 72.214. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing,'' directed that the Government's writing be in plain language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license. Any nuclear power reactor licensee can use NRC-certified casks to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. In that rule, four spent fuel storage casks were approved for use at reactor sites and were listed in 10 CFR 72.214. That rule envisioned that storage casks certified in the future could be added to the listing in 10 CFR 72.214 through rulemaking procedures. Procedures and criteria for obtaining NRC approval of new spent fuel storage cask designs were provided in 10 CFR part 72, subpart L. Subsequently, additional casks have been added to the listing in 10 CFR 72.214.

The alternative to this proposed action is not to certify these new designs and give a site-specific license to each utility that proposes to use the casks. This would cost the NRC more time and money for site-specific reviews. Using site-specific reviews would ignore the procedures and criteria currently in place for the addition of new cask designs and would be in conflict with the NWPA direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the extent practicable, the need for additional site reviews. Also, this alternative is anticompetitive because it would exclude new vendors without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees.

Approval of the proposed rule would eliminate the above problems and is consistent with previous Commission actions. Further, the proposed rule will have no adverse effect on public health and safety.

The benefit of this proposed rule to nuclear power reactor licensees is to make available a greater choice of spent fuel storage cask designs that can be used under a general license. However, the newer cask design may have a market advantage over the existing designs because power reactor licensees may prefer to use the newer casks with improved features. The new cask vendors with casks to be listed in 10 CFR 72.214 benefit by having to obtain NRC certificates only once for a design that can then be used by more than one power reactor licensee. The NRC also benefits because it will need to certify a cask design only once for use by multiple licensees. Casks approved through rulemaking are to be suitable for use under a range of environmental conditions sufficiently broad to encompass multiple nuclear power plant sites in the United States without the need for further site-specific approval by NRC. Vendors with cask designs already listed may be adversely impacted because power reactor licensees may choose a newly listed design over an existing one. However, the NRC is required by its regulations and the NWPA direction to certify and list approved casks. This proposed rule would have no significant identifiable impact or benefit on other Government agencies.

Based on the above discussion of the benefits and impacts of the alternatives,

the NRC concludes that the requirements of the proposed rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and cask vendors. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this proposed rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

List of Subjects In 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1025 is added to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1025
SAR Submitted by: NAC International
SAR Title: Final Safety Analysis Report for the NAC Multi-Purpose Canister System (NAC–MPC System)
Docket Number: 72–1025
Certification Expiration Date: [insert 20 years after the effective date of the final rule]
Model Number: NAC–MPC

* * * * *

Dated at Rockville, Maryland, this 9th day of August, 1999.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 99–21799 Filed 8–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG 30

List of Approved Spent Fuel Storage Casks: (TN–68) Addition

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to add the Transnuclear TN–68 cask system to the list of approved spent fuel storage casks. This amendment will allow the holders of power reactor operating licenses to store spent fuel in the Transnuclear TN–68 cask system under a general license.

DATES: The comment period expires November 8, 1999. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Hand deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (http://ruleforum.llnl.gov). This site provides the availability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received by the NRC, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Stan Turel, telephone (301) 415–6234, e-mail, spt@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires, ''for the dry storage of spent nuclear fuel at civilian power reactor sites, with the objective of establishing one or more technologies the (Nuclear Regulatory) Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved

casks under a general license, publishing on July 18, 1990, a final rule in 10 CFR part 72 entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181). This rule also established a new Subpart L within 10 CFR Part 72 entitled ''Approval of Spent Fuel Storage Casks,'' containing procedures and criteria for obtaining NRC approval of dry storage cask designs.

Discussion

This proposed rule would add the Transnuclear TN–68 cask system to the list of NRC-approved casks for spent fuel storage in 10 CFR 72.214. Following the procedures specified in 10 CFR 72.230 of subpart L, Transnuclear, Inc., submitted an application for NRC approval with the Safety Analysis Report (SAR): ''Final Safety Analysis Report for the TN–68 Dry Storage Cask,'' dated January 23, 1998. The NRC evaluated the Transnuclear, Inc., submittal and issued a preliminary Safety Evaluation Report (SER) on the Transnuclear, Inc., SAR and proposed Certificate of Compliance (CoC) for the Transnuclear TN–68 cask system on August 9, 1999.

The NRC is proposing to approve the Transnuclear TN–68 cask system for storage of spent fuel under the conditions specified in the proposed CoC. This cask system, when used in accordance with the conditions specified in the CoC and NRC regulations, will meet the requirements of 10 CFR part 72; thus, adequate protection of the public health and safety would be ensured. This cask system is being proposed for listing under 10 CFR 72.214, ''List of approved spent fuel storage casks,'' to allow holders of power reactor operating licenses to store spent fuel in this cask system under a general license. The CoC would terminate 20 years after the effective date of the final rule listing this cask in 10 CFR 72.214, unless the cask system's CoC is renewed. The certificate contains conditions for use which are specific for this cask system and addresses issues such as operating procedures, training exercises, and spent fuel specification.

The proposed CoC for the Transnuclear TN–68 cask system and the underlying preliminary SER, dated August 9, 1999, are available for inspection and comment at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the proposed CoC and preliminary SER may be obtained from Stan Turel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6234, email spt@nrc.gov.

Discussion of Proposed Amendments by Section

Section 72.214 List of approved spent fuel storage casks.

Certificate Number 1027 would be added indicating that:

(1) The title of the SAR submitted by Transnuclear, Inc., is ''Final Safety Analysis Report for the TN–68 Dry Storage Cask'';

(2) The certificate expiration date would be 20 years after final rule effective date; and

(3) The model number affected is TN–68.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in subpart A of 10 CFR part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule is mainly administrative in nature. It would not have significant environmental impacts. The proposed rule would add the Transnuclear TN–68 cask system to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals by the NRC. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Stan Turel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415–6234, email spt@nrc.gov.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of the Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

If a means to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would add the Transnuclear TN–68 cask system to the list of NRC approved casks for spent fuel storage in 10 CFR 72.214. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing,'' directed that the Government's writing be in plain language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license. Any nuclear power reactor licensee can use NRC-certified casks to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the

cask's CoC, and the conditions of the general license are met. In that rule, four spent fuel storage casks were approved for use at reactor sites and were listed in 10 CFR 72.214. That rule envisioned that storage casks certified in the future could be added to the listing in 10 CFR 72.214 through rulemaking procedures. Procedures and criteria for obtaining NRC approval of new spent fuel storage cask designs were provided in 10 CFR part 72, subpart L. Subsequently, additional casks have been added to the listing in 10 CFR 72.214.

The alternative to this proposed action is not to certify these new designs and give a site-specific license to each utility that proposes to use the casks. This would cost the NRC more time and money for site-specific reviews. Using site-specific reviews would ignore the procedures and criteria currently in place for the addition of new cask designs and would be in conflict with the NWPA direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the extent practicable, the need for additional site reviews. Also, this alternative is anticompetitive because it would exclude new vendors without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees.

Approval of the proposed rule would eliminate the above problems and is consistent with previous Commission actions. Further, the proposed rule will have no adverse effect on public health and safety.

The benefit of this proposed rule to nuclear power reactor licensees is to make available a greater choice of spent fuel storage cask designs that can be used under a general license. However, the newer cask design may have a market advantage over the existing designs because power reactor licensees may prefer to use the newer casks with improved features. The new cask vendors with casks to be listed in 10 CFR 72.214 benefit by having to obtain NRC certificates only once for a design that can then be used by more than one power reactor licensee. The NRC also benefits because it will need to certify a cask design only once for use by multiple licensees. Casks approved through rulemaking are to be suitable for use under a range of environmental conditions sufficiently broad to encompass multiple nuclear power plant sites in the United States without the need for further site-specific approval by NRC. Vendors with cask designs already listed may be adversely impacted because power reactor licensees may choose a newly listed design over an existing one. However, the NRC is required by its regulations and the NWPA direction to certify and list approved casks. This proposed rule would have no significant identifiable impact or benefit on other Government agencies.

Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the proposed rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and cask vendors. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this proposed rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

List of Subjects In 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d—48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1027 is added to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1027
SAR Submitted by: Transnuclear, Inc.
SAR Title: Final Safety Analysis Report for the TN–68 Dry Storage Cask
Docket Number: 72–1027
Certification Expiration Date: [insert 20 years after the effective date of the final rule]
Model Number: TN–68

* * * * *

Dated at Rockville, Maryland, this 9th day of August, 1999.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 99–21798 Filed 8–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG 18

List of Approved Spent Fuel Storage Casks: (TN–32) Addition

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to add the Transnuclear TN–32 cask system to the list of approved spent fuel storage casks. This amendment will allow the holders of power reactor operating licenses to store spent fuel in the Transnuclear TN–32 cask system under a general license.

DATES: The comment period expires November 8, 1999. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Hand deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (http://ruleforum.llnl). This site provides the availability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received by the NRC, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Stan Turel, telephone (301) 415–6234, e-mail, spt@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires, ''for the dry storage of spent nuclear fuel at civilian power reactor sites, with the objective of establishing one or more technologies the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license, publishing on July 18, 1990, a final rule in 10 CFR Part 72 entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181). This rule also established a new Subpart L within 10 CFR Part 72 entitled ''Approval of Spent Fuel Storage Casks,'' containing procedures and criteria for obtaining NRC approval of dry storage cask designs.

Discussion

This proposed rule would add the Transnuclear TN–32 cask system to the list of NRC-approved casks for spent fuel storage in 10 CFR 72.214. Following the procedures specified in 10 CFR 72.230 of Subpart L, Transnuclear, Inc., submitted an application for NRC approval with their Safety Analysis Report (SAR): ''TN–32 Dry Storage Cask Topical Safety Analysis Report (TSAR), Revision 10,'' dated May 8, 1998. The NRC evaluated the Transnuclear, Inc., submittal and issued a preliminary Safety Evaluation Report (SER) on the Transnuclear, Inc., SAR and a proposed Certificate of Compliance (CoC) for the Transnuclear TN–32 cask system on August 9, 1999.

The NRC is proposing to approve the Transnuclear TN–32 cask system for storage of spent fuel under the conditions specified in the proposed CoC. This cask system, when used in accordance with the conditions specified in the CoC and NRC regulations, will meet the requirements of 10 CFR Part 72; thus, adequate protection of the public health and safety would be ensured. This cask system is being proposed for listing under 10 CFR 72.214, ''List of approved spent fuel storage casks,'' to allow holders of power reactor operating licenses to store spent fuel in this cask system under a general license. The CoC would terminate 20 years after the effective date of the final rule listing this cask in 10 CFR 72.214, unless the cask system's CoC is renewed. The certificate contains conditions for use which are specific for this cask system and addresses issues such as operating procedures, training exercises, and spent fuel specification.

The proposed CoC for the Transnuclear TN–32 cask system and the underlying preliminary SER, dated August 9, 1999, are available for inspection and comment at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the proposed CoC and preliminary SER may be obtained from Stan Turel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6234, e-mail spt@nrc.gov.

Discussion of Proposed Amendments by Section

§ 72.214 List of Approved Spent Fuel Storage Casks

Certificate Number 1021 would be added indicating that:

(1) The title of the SAR submitted by Transnuclear, Inc., is ''Final Safety Analysis Report for the TN–32 Dry Storage Cask'';

(2) The certificate expiration date would be 20 years after final rule effective date; and

(3) The model numbers affected are TN–32, TN–32A, and TN–32B.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule is mainly administrative in nature. It would not have significant environmental impacts. The proposed rule would add the Transnuclear TN–32 cask system to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals by the NRC. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Stan Turel,

Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415–6234, email spt@nrc.gov.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA) or the provisions of the Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would add the Transnuclear TN–32 cask system to the list of NRC approved casks for spent fuel storage in 10 CFR 72.214. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing,'' directed that the Government's writing be in plain language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR Part 72 to provide for the storage of spent nuclear fuel under a general license. Any nuclear power reactor licensee can use NRC-certified casks to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. In that rule, four spent fuel storage casks were approved for use at reactor sites and were listed in 10 CFR 72.214. That rule envisioned that storage casks certified in the future could be added to the listing in 10 CFR 72.214 through rulemaking procedures. Procedures and criteria for obtaining NRC approval of new spent fuel storage cask designs were provided in 10 CFR Part 72, Subpart L. Subsequently, additional casks have been added to the listing in 10 CFR 72.214.

The alternative to this proposed action is not to certify these new designs and give a site-specific license to each utility that proposes to use the casks. This would cost the NRC more time and money for site-specific reviews. Using site-specific reviews would ignore the procedures and criteria currently in place for the addition of new cask designs and would be in conflict with the NWPA direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the extent practicable, the need for additional site reviews. Also, this alternative is anticompetitive because it would exclude new vendors without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees.

Approval of the proposed rule would eliminate the above problems and is consistent with previous Commission actions. Further, the proposed rule will have no adverse effect on public health and safety.

The benefit of this proposed rule to nuclear power reactor licensees is to make available a greater choice of spent fuel storage cask designs that can be used under a general license. However, the newer cask design may have a market advantage over the existing designs because power reactor licensees may prefer to use the newer casks with improved features. The new cask vendors with casks to be listed in 10 CFR 72.214 benefit by having to obtain NRC certificates only once for a design that can then be used by more than one power reactor licensee. The NRC also benefits because it will need to certify a cask design only once for use by multiple licensees. Casks approved through rulemaking are to be suitable for use under a range of environmental conditions sufficiently broad to encompass multiple nuclear power plant sites in the United States without the need for further site-specific approval by NRC. Vendors with cask designs already listed may be adversely impacted because power reactor licensees may choose a newly listed design over an existing one. However, the NRC is required by its regulations and the NWPA direction to certify and list approved casks. This proposed rule would have no significant identifiable impact or benefit on other Government agencies.

Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the proposed rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and cask vendors. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this proposed rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

List of Subjects In 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1021 is added to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1021.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the TN–32 Dry Storage Cask.

Docket Number: 72–1021.

Certification Expiration Date: [insert 20 years after the effective date of the final rule] Model Numbers: TN–32, TN–32A, TN–32B

* * * * *

Dated at Rockville, Maryland, this 9th day of August, 1999.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 99–21800 Filed 8–20–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–19–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP 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 British Aerospace BAe Model ATP airplanes. This proposal would require repetitive inspections to detect chafing on the fuel manifold drain hose and the adjacent access panel; and corrective actions, if necessary; and installation of a protective spiral wrap on the fuel manifold drain hose. This proposal also would provide for an optional terminating action for the repetitive inspections. This proposal is prompted by reports of chafing between the fuel manifold drain hose and the access panel due to contact between the two components over time. The actions specified by the proposed AD are intended to prevent chafing within the engine nacelle, which could result in flammable fluid leaking into a zone that contains ignition sources.

DATES: Comments must be received by September 22, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–19–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 AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

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 99–NM–19–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–114, Attention: Rules Docket No. 99–NM–19–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain British Aerospace BAe Model ATP airplanes. The CAA advises that it has received reports indicating that chafing was found between the fuel manifold drain hose and an access

panel. Over time, this chafing can result in damage to the access panel which would compromise the sealing of a designated fire zone and damage the drain hose, which could result in fuel leaking into a designated fire zone. The chafing has been attributed to the design of the fuel manifold drain hose; its routing allows for contact with the access panel. This condition, if not corrected, could result in flammable fluid leaking into a zone that contains ignition sources.

Explanation of Relevant Service Information

British Aerospace has issued Alert Service Bulletin ATP–A71–14, dated November 4, 1998, which describes procedures for repetitive inspections to detect chafing on the fuel manifold drain hose and the adjacent access panel; and corrective actions, if necessary. The corrective actions involve replacement of the fuel manifold drain hose with the same hose design and repair of the access panel. The service bulletin also describes procedures for installation of a protective spiral binding on the drain hose. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

British Aerospace also has issued Service Bulletin ATP–71–15, dated December 11, 1998, which describes procedures for replacement of the fuel manifold drain hose with a new, improved hose. This optional replacement would eliminate the need for the repetitive inspections.

Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in Alert Service Bulletin ATP–71–14 described previously. The proposed AD also would provide for an optional terminating action for the repetitive inspections.

Operators should note that, in consonance with the findings of the CAA, the FAA has determined that the repetitive inspections proposed by this AD can be allowed to continue in lieu of accomplishment of a terminating action. In making this determination, the FAA considers that, in this case, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections to detect chafing before it represents a hazard to the airplane.

Cost Impact

The FAA estimates that 10 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 inspection on the fuel manifold drain hose and access panel, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $1,200, or $120 per airplane, per inspection cycle.

It would take approximately 1 work hour per airplane to accomplish the proposed installation of the spiral wrap on the fuel manifold drain hose, at an average labor rate of $60 per work hour. Required parts would cost approximately $10 per airplane. Based on these figures, the cost impact of the inspections proposed by this AD on U.S. operators is estimated to be $700, or $70 per airplane.

The cost impact figures discussed above are 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.

Should an operator elect to accomplish the optional terminating option rather than continue the repetitive inspections, it would take approximately 7 work hours per airplane to accomplish the optional terminating action, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,600 (pre-modification 35215A) or $2,400 (post-modification 35215A) per airplane. Based on these figures, the cost impact of this optional terminating action is estimated to be $2,020 (pre-modification 35215A) or $2,820 (post-modification 35215A) per airplane.

Regulatory Impact

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. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

British Aerospace Regional Aircraft
[Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Docket 99–NM–19–AD.

Applicability: BAe Model ATP airplanes, except those airplanes on which British

Aerospace Modification 10455A or 10455B (reference British Aerospace Service Bulletin ATP–71–15, dated December 11, 1998) has been accomplished, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing within the engine nacelle, which could result in flammable fluid leaking into a zone that contains ignition sources, accomplish the following:

Repetitive Inspections and Corrective Actions

(a) Prior to the accumulation of 3,000 total flight hours, or within 1 month after the effective date of this AD, whichever occurs later, perform the actions required in paragraphs (a)(1), (a)(2), and (a)(3) of this AD in accordance with British Aerospace Alert Service Bulletin ATP–A71–14, dated November 4, 1998. Thereafter, repeat the inspections required by paragraphs (a)(1) and (a)(2) of this AD at intervals not to exceed 1,500 flight hours, until accomplishment of the actions specified in paragraph (b) of this AD.

(1) Perform an inspection of the access panel, part number (P/N) JD713J0037–000, to detect chafe damage. If any chafe damage is detected, repair the access panel in accordance with the service bulletin at the time specified in paragraph (a)(1)(i), (a)(1)(ii), or (a)(1)(iii), of this AD, as applicable.

(i) If the damage has reduced the skin thickness by 10 percent or less: Repair within 600 flight hours.

(ii) If the damage has reduced the thickness of the skin by more than 10 percent, but less than 20 percent: Repair within 100 flight hours.

(iii) If the damage has reduced the thickness of the skin by more than 20 percent: Repair prior to further flight.

(2) Perform an inspection of the fuel manifold drain hose, P/N JD007J0983–000 (C37351), to detect chafe damage. If any chafe damage is detected, either replace the fuel manifold drain hose with a new fuel manifold drain hose, P/N JD007J0983–000, in accordance with the service bulletin at the time specified in paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this AD, as applicable; or accomplish the replacement specified in paragraph (b) of this AD. Replacement of the fuel manifold drain in accordance with paragraph (b) of this AD constitutes terminating action for the repetitive inspections required by this AD.

(i) If there are signs of worn or polished strands in the outer braid, but no strand is broken: Replace within 1,500 flight hours.

(ii) If five or less strands are broken: Replace within 300 flight hours.

(iii) If more than five strands are broken or any sign of fuel leakage exists: Replace prior to further flight.

(3) Install a protective spiral binding, P/N EFWRAP–125, on the fuel manifold drain hose.

Optional Terminating Action

(b) Replacement of the fuel manifold drain hose, P/N JD007J0983–000 (C37351), with a new, improved drain hose, P/N JD007J2377–000 (C44311), in accordance with British Aerospace Service Bulletin ATP–71–15, dated December 11, 1998, constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, 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, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(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.

Issued in Renton, Washington, on August 17, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–21845 Filed 8–20–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–101–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 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 Boeing Model 757 series airplanes. This proposal would require a modification of the reverse thrust lever assemblies and replacement of the spring bumper assemblies of the thrust reverser sleeves with new assemblies. This proposal is prompted by an FAA review of the thrust reverser system on all transport category airplanes including the Boeing Model 757 series airplane. The actions specified by the proposed AD are intended to prevent operation with an energized sync lock or malfunctioning sleeve locking devices, which could result in the deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane.

DATES: Comments must be received by October 7, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–101–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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kathrine Rask, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1547; fax (425) 227–1181.

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 99–NM–101–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–114, Attention: Rules Docket No. 99–NM–101–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Following a 1991 accident caused by deployment of a thrust reverser in flight on a Boeing Model 767 series airplane, the FAA initiated a special certification review of all transport category thrust reverser systems and airplane controllability in the event of deployment of a thrust reverser in flight. As a result of that review, Boeing developed, for certain Boeing airplane models, an additional thrust reverser locking system and conducted a safety assessment to determine the probability of deployment of a thrust reverser in flight. The safety assessment evaluates every possible combination of failures for the thrust reverser system that could result in deployment of a thrust reverser in flight, and considers the probability and detectability of each failure. The safety assessment for the Model 757 series airplane identified two failure conditions that, because they are latent failures, would significantly affect the reliability of the thrust reverser locking system and, in combination with other failures in the thrust reverser system, could result in deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane. The two failure conditions are described below.

- Failure of the reverse thrust switch actuator causes the switch to remain in a powered position. The failure causes the thrust reverser sync lock to remain energized while the airplane is operated on the ground, during the takeoff roll, and possibly during the first two minutes of flight. This failure would not prevent normal operation of the thrust reverser; however, it would not be detected until the next sync lock integrity test was conducted.
- The spring bumper assembly pushes on the thrust reverser translating sleeve causing adequate sleeve movement, if the sleeve is unlocked, to activate the auto-restow system in flight or provide a visual indication of an unlocked sleeve during the ground walk-around inspection. If the spring bumper assembly fails, it is likely that a malfunctioning sleeve locking device would not be detected for several flight cycles.

Should either of these failure conditions occur but remain undetected for an extended period, in the event of other failures in the thrust reverser system, the thrust reverser locking systems may not prevent deployment of a thrust reverser in flight.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 757–76–0009, Revision 1, dated December 3, 1998, which describes procedures for a modification of the reverse thrust lever assemblies. This modification improves the reliability of the reverse thrust switch and changes the failed state of the switch, such that failure of the reverse thrust switch actuator does not result in latching of the relay and consequent energizing of the sync lock or opening of the isolation valve.

The FAA has also reviewed and approved Boeing Service Bulletin 757–78–0012, dated August 31, 1989, which describes procedures for replacement of the spring bumper assembly of the thrust reverser sleeve with a new spring bumper assembly with an improved service life. Such replacement ensures that a malfunctioning sleeve locking device will be detected within one flight cycle.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

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 accomplishment of the actions specified in the service bulletins described previously.

Explanation of Applicability

Certain airplanes listed in Boeing Service Bulletin 757–76–0009, Revision 1, may not need to be modified in accordance with that service bulletin. Certain Model 757 series airplanes powered by Pratt and Whitney Model PW2000 engines that are affected by Boeing Service Bulletin 757–76–0009, Revision 1, were delivered with reverse thrust switches that open the thrust reverser hydraulic isolation valves. On these airplanes, failure of the reverse thrust switch actuator causes the hydraulic isolation valve to remain open while the airplane is on the ground and during the takeoff roll. Such a failure would be detected through various engine indicating and crew alerting system (EICAS) messages within one flight. Therefore, because the failure would not go undetected for an extended period, the reliability of the thrust reverser locking system is not significantly affected, no unsafe condition exists, and these airplanes are not subject to the modification described in Boeing Service Bulletin 757–76–0009, Revision 1.

Certain other Model 757 series airplanes powered by Pratt and Whitney Model PW2000 engines that are affected by Boeing Service Bulletin 757–76–0009, Revision 1, have a redesigned switch function arrangement on which the reverse thrust switches energize the sync locks. (This redesign transfers control of the hydraulic isolation valve from the reverse thrust switches to the autothrottle switchpack switches.) On these airplanes, failure of the reverse thrust switch actuator causes the reverse thrust switch to remain in a powered position, which results in the thrust reverser sync lock remaining energized while the airplane is on the ground. Because there is no indication of such a failure, except from the sync lock integrity test, these airplanes would therefore be subject to the unsafe condition described previously.

The FAA knows of operators of Boeing Model 757 series airplanes powered by Pratt and Whitney Model PW2000 engines that have incorporated the redesigned switch function arrangement. However, the FAA cannot define the extent of incorporation of this modification in the affected fleet; therefore, this proposed AD is applicable to all airplanes listed in Boeing Service Bulletin 757–76–0009, Revision 1 (in addition to those listed in Boeing Service Bulletin 757–78–0012). If an operator of Boeing Model 757 series airplanes powered by Pratt and Whitney Model PW2000 engines can determine that the reverse thrust switches, as defined in Boeing Service Bulletin 757–76–0009, Revision 1, open the thrust reverser hydraulic isolation valves, that operator may request an alternative method of compliance in

accordance with paragraph (c) of this proposed AD.

Cost Impact

There are approximately 308 airplanes of the affected design in the worldwide fleet.

The FAA estimates that the proposed modification of the reverse thrust lever assemblies would be required to be accomplished on 169 U.S. registered airplanes. It would take approximately 8 work hours per airplane to accomplish the proposed modification at an average labor rate of $60 per work hour. Required parts would cost approximately $29 per airplane. Based on these figures, the cost impact of this proposed modification on U.S. operators is estimated to be $86,021, or $509 per airplane.

The FAA estimates that the proposed replacement of the spring bumper assemblies would be required to be accomplished on 92 U.S. registered airplanes. It would take approximately 10 work hours per airplane to accomplish the proposed replacement at an average labor rate of $60 per work hour. Required parts would cost approximately $5,178 per airplane. Based on these figures, the cost impact of this proposed replacement on U.S. operators is estimated to be $531,576, or $5,778 per airplane.

The cost impact figures discussed above are 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.

Regulatory Impact

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. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Boeing: Docket 99–NM–101–AD.

Applicability: Model 757 series airplanes, as listed in Boeing Service Bulletin 757–76–0009, Revision 1, dated December 3, 1998, or Boeing Service Bulletin 757–78–0012, dated August 31, 1989; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent operation with an energized sync lock or malfunctioning sleeve locking devices, which could result in deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane, accomplish the following:

(a) For airplanes listed in Boeing Service Bulletin 757–76–0009, Revision 1, dated December 3, 1998: Within 2 years after the effective date of the AD, replace the reverse thrust switches and actuators with improved switches and actuators, and modify the reverse lever links and thrust control levers in accordance with the service bulletin.

Note 2: Modifications accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 757–76–0009, dated November 8, 1990, are considered acceptable for compliance with the applicable action specified in this amendment.

(b) For airplanes listed in Boeing Service Bulletin 757–78–0012, dated August 31, 1989: Within 2 years after the effective date of the AD, replace the spring bumper assemblies of the thrust reverser sleeve with improved assemblies in accordance with the service bulletin.

Alternative Methods of Compliance

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

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

Special Flight Permits

(d) Special flight permits may be issued in accordance with 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 August 17, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–21846 Filed 8–20–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–78–AD]

Airworthiness Directives; Eurocopter France Model AS 332C, L, and L1 Helicopters

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 Eurocopter France Model AS 332C, L, and L1 helicopters. This proposal would require a one-time inspection of the length of the main gearbox epicyclic module upper casing bearing attachment bolts (attachment bolts), and if they exceed a certain length, replacing the epicyclic module to preclude a potential interference between the attachment bolts and the 2nd stage

planet gear cage web. This proposal is prompted by a report of interference between the attachment bolts and the second stage planet gear cage web of the epicyclic module in the main gearbox. The actions specified by the proposed AD are intended to prevent failure of the second stage planet gear of the main gearbox, loss of main rotor drive and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before October 22, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–78–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas. 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 American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

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 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 No. 98–SW–78–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, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–78–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Générale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on Eurocopter France Model AS 332C, L, and L1 helicopters. The DGAC advises that some attachments bolts may be too long and could interfere with the 2nd stage planet gear cage web.

Eurocopter France has issued Eurocopter Service Bulletin (SB) No. 01.41, dated November 1995 (95–11), applicable to Model AS 332 helicopters, which specifies inspecting the attachment bolts for length, and replacing the epicyclic module before further flight if any attachment bolts are found that exceed 53mm (2.087 inches) in length. The DGAC classified this SB as mandatory and issued AD 93–131–051(B)R1, dated January 18, 1995, in order to assure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS 332C, L, and L1 helicopters of the same type design registered in the United States, the proposed AD would require a one-time inspection of the length of the attachment bolts, and if any exceed 53mm in length, replacing the epicyclic module.

The FAA estimates that 1 helicopter of U.S. registry would be affected by this proposed AD, and that it would require approximately 8 work hours per helicopter to accomplish the proposed actions at an average labor rate of $60 per work hour. Required parts would cost $365,235 to replace the epicyclic module, if necessary. The cost of the attachment bolts would be $11. Based on these figures, the total cost impact of this AD, including parts and labor, would be $491, assuming the bolts are the correct length and the epicyclic module does not have to be replaced.

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. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Eurocopter France: Docket No. 98–SW–78–AD.

Applicability: Model AS 332C, L, and L1 helicopters, with epicyclic modules, part number 332A32–2007–00 or –01, with serial numbers with the prefix of ''M'', from 100 through 689 or 3000 through 3048, installed, certificated in any category.

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

Compliance: Required as indicated in paragraph DD of Eurocopter Service Bulletin No. 01.41, dated November 1995 (95–11) (SB), unless accomplished previously.

To prevent failure of the second stage planet gear of the main gearbox, loss of main rotor drive and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect each main gearbox epicyclic module upper casing bearing attachment bolt (attachment bolt) in accordance with paragraph CC of the SB.

(b) If any attachment bolt length is greater than 53mm (2.086 inches), remove the epicyclic module and replace the epicyclic module with an airworthy epicyclic module before further flight.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

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

(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 helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 93–131–051(B)R1, dated January 18, 1998.

Issued in Fort Worth, Texas, on August 17, 1999.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–21847 Filed 8–20–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 357

[Docket No. RM99–10–000]

Revision of FERC Form No. 6: Annual Report of Oil Pipeline Companies; Notice of Revised Dates for the Technical Conference, Notification of Attendance and Written Comments

August 17, 1999.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Revised Dates for the Technical Conference, Notifying the Commission of Persons Who Wish to Attend the Conference, and Filing Written Comments on Revisions to FERC Form No. 6: Annual Report of Oil Pipeline Companies (FERC Form No. 6).

SUMMARY: On July 30, 1999, the Federal Energy Regulatory Commission (Commission) issued a Notice of Technical Conference to solicit comments and discuss potential changes to the FERC Form No. 6 to better meet current and future regulatory requirements and industry needs. Based on industry recommendations, the technical conference is being rescheduled for Tuesday, September 21, 1999, at 9:00 A.M., in Rooms 3M–2A and 3M–2B. Additionally, the dates for notifying the Commission of persons who wish to attend the conference and for filing written comments are extended to Wednesday, September 1, 1999. Refer to the Notice of Technical Conference the Commission issued on July 30, 1999, for details about the conference and the requirements for notifying the Commission of persons who wish to attend the conference and for filing written comments.

DATES: The technical conference will be held on Tuesday, September 21, 1999.

Notification of persons who wish to attend the conference must be filed on or before Wednesday, September 1, 1999.

Written comments must be filed on or before Wednesday, September 1, 1999.

ADDRESSES: The technical conference will be held at the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

Submit written comments to:

Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426

Persons who wish to attend the conference must notify:

Michael Oliva, (202) 219–2597, FAX: (202) 219–0125, E-Mail: *michael.oliva@ferc.fed.us*

or

Donna Culbertson, (202) 219–1102, FAX: (202) 219–0125, E-Mail: *donna.culbertson@ferc.fed.us*

FOR FURTHER INFORMATION CONTACT:

Donna Culbertson (Technical Issues), Office of Finance, Accounting and Operations, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 219–1102

Andy Lyon (Legal Issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–0637

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994 to the present. CIPS can be accessed via Internet through FERC's Home Page (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and WordPerfect 6.1 format. User assistance is available at 202–208–2474 or by E-mail to cipsmaster@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Home Page using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy

contractor, RVJ International, Inc. RVJ International, Inc., is located in the Public Reference Room at 888 First Street, N.E., Washington, DC 20426.

On July 30, 1999, the Federal Energy Regulatory Commission (Commission) issued a Notice of Technical Conference to solicit comments and discuss potential changes to FERC Form No. 6 to better meet current and future regulatory requirements and industry needs. Based on industry recommendations, the technical conference is being rescheduled for Tuesday, September 21, 1999, at 9:00 A.M., in Rooms 3M–2A and 3M–2B at the offices of the Federal Energy Regulatory Commission at 888 First Street, N.E., Washington, D.C. Additionally, the dates for notifying the Commission of persons who wish to attend the conference and for filing written comments are extended to Wednesday, September 1, 1999. Refer to the Notice of Technical Conference the Commission issued on July 30, 1999, for details about the conference and the requirements for notifying the Commission of persons who wish to attend the conference and for filing written comments.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21757 Filed 8–20–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98P–0683]

Food Labeling: Health Claims; Soy Protein and Coronary Heart Disease

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing this document as a reproposal of one provision of its proposed rule of November 10, 1998, entitled ''Food Labeling: Health Claims; Soy Protein and Coronary Heart Disease.'' In that proposal, FDA tentatively indicated its intention to use a specific analytical method to measure soy protein for assessing compliance. Comments on that proposal argued that that method is inadequate for many products. FDA is therefore proposing an alternative procedure that will rely on measurement of total protein and require manufacturers, in certain circumstances, to maintain records that document the amount of soy protein in products and to make those records available to appropriate regulatory officials for inspection and copying upon request.

DATES: Written comments by September 22, 1999. See section VI of this document for the effective date of any final rule that may issue based upon this proposal.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written comments on the information collection provisions to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., Washington, DC 20503, ATTN: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Susan M. Pilch, Center for Food Safety and Applied Nutrition (HFS–465), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4500.

SUPPLEMENTARY INFORMATION:

I. Background

On November 8, 1990, the President signed into law the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Public Law 101–535). This new law amended the Federal Food, Drug, and Cosmetic Act (the act) in a number of important ways. One of the most notable aspects of the 1990 amendments was that they provided procedures whereby FDA is to regulate health claims on food labels and in food labeling.

In the **Federal Register** of January 6, 1993 (58 FR 2478), FDA issued a final rule that implemented the health claim provisions of the act. In that final rule, FDA adopted § 101.14 (21 CFR 101.14), which sets out the rules for the authorization and use of health claims. Additionally, FDA established in § 101.70 (21 CFR 101.70) a process for petitioning the agency to authorize health claims about a substance-disease relationship (§ 101.70(a)) and sets out the types of information that any such petition must include (§ 101.70(f)).

In the **Federal Register** of November 10, 1998 (63 FR 62977), FDA proposed adding § 101.82 to authorize the use, on food labels and in food labeling, of health claims on the association between soy protein and reduced risk of coronary heart disease (CHD) (the soy protein proposed rule). FDA proposed this action in response to a petition filed by Protein Technologies International, Inc. (the petitioner) (Refs. 1 and 2). In the soy protein proposed rule, the agency presented the rationale for a health claim on this substance-disease relationship as provided for under the standard in section 403(r)(3)(B)(i) of the act (21 U.S.C. 343(r)(3)(B)(i)) and § 101.14(c) of FDA's regulations. The agency tentatively concluded that, based on the totality of publicly available scientific evidence, soy protein included in a diet low in saturated fat and cholesterol may reduce the risk of CHD. The soy protein proposed rule included qualifying criteria for the purpose of identifying soy protein-containing foods eligible to bear the proposed health claim and a proposed method for assessing compliance with the qualifying criteria.

The petitioner requested that measurement of total soy isoflavones be used as a marker for the content of soy protein in foods and as an indicator of the effectiveness of soy protein products in reducing blood cholesterol levels. As discussed in section III.C.5 of the soy protein proposed rule (63 FR 62977 at 62987 to 62988), FDA found that the petitioner's conclusions regarding the significance of soy isoflavones with respect to the observed cholesterol-lowering effects of soy protein were not supported by the available studies. Thus, in section V.C. of the soy protein proposed rule (63 FR 62977 at 62992), FDA found the petitioner's proposed methodology to assess isoflavones was not suitable for assessing whether foods contain sufficient soy protein to be eligible to bear the health claim. Accordingly, in § 101.82(c)(2)(ii)(B), FDA proposed to measure soy protein for compliance purposes using the Association of Official Analytical Chemists International (AOAC) official method of analysis No. 988.10. This AOAC method is an enzyme-linked immunosorbent assay (ELISA) that can detect soy protein in raw and heat-processed meat products. With this assay, samples are compared to standard commercial soy protein and appropriate blanks. The sample extraction procedure, which involves preparation of an acetone powder, has been shown to be appropriate for a complex food matrix (meat). FDA tentatively concluded that this assay also should be suitable for other food matrices and requested comments on the suitability of this method for assuring that foods bearing the health claim contain qualifying levels of soy protein.

II. Assessing Qualifying Amounts of Soy Protein in Foods

In response to the soy protein proposed rule, the agency received approximately 130 letters, each containing one or more comments, from consumers, consumer organizations,

professional organizations, government agencies, industry, trade associations, health care professionals, and research scientists.

Several of the submissions included comments about the analytical method that FDA had proposed to assess the qualifying levels of soy protein. All of these comments disagreed with the proposed approach to assessing compliance, and some suggested alternative approaches. The agency is addressing only the comments about the analytical method and compliance assessment in this document.

A. Comments on the Proposed Analytical Method

All of the comments on the proposed analytical method disagreed with the use of AOAC official method of analysis No. 988.10 and concluded that this ELISA method was unlikely to produce a reliable measure of the soy protein content of foods in all cases. Several comments noted that the method was designed and validated (Refs. 3 and 4) for the detection of soy protein in raw and cooked meat products. They also noted that numerous factors affect the quantitative results obtained and reported that published and unpublished data indicated that the assay can usually only be considered semi-quantitative.

The comments pointed out several problems with the assay including:

(1) Different soy protein sources and methods of processing (defatted flours, isolates, concentrates, products subject to hydrolysis or extrusion) can yield different response factors to the immunoassay (Refs. 4 through 7).

(2) Heating the sample can induce loss of response (Ref. 5).

(3) Only a small number of matrices have been tested for interference with soy protein quantitation. Although most of these were relatively low (Refs. 4 and 5), other vegetable and cereal sources of protein have the potential for considerable interference and need to be tested.

(4) The collaborative study of the method in meat products containing few or none of the potential interferents indicated a between-laboratory variability of approximately 30 percent (Ref. 6).

One comment noted that the need to have available a sample of the specific soy protein ingredient used in the product for calibration (Ref. 7) in order to have a quantitative method posed difficulties in the practical use of the assay. Because many foods contain more than one soy protein ingredient that may be processed differently, use of the assay would require manufacturers to maintain samples and product specification sheets for possible later analysis. Another comment noted the expense of validating the method for each soy protein source and each product produced.

The agency is persuaded by these comments that AOAC official method of analysis No. 988.10 is not an appropriate method for the quantitation of soy protein in many of the products that may be eligible to bear the health claim. Therefore, FDA will not be adopting its use to assess compliance in the final rule.

B. Alternatives for Assessing Compliance

Some comments urged that FDA consider use of other validated ELISA methods. One published variation on the ELISA procedure (Ref. 8), like the method that FDA had initially proposed, has been validated only in meat products. Other ELISA assay techniques described in a comment were reported to be proprietary. Without validation data on such procedures, FDA is not proposing their use.

Several of the comments urged FDA to work collaboratively with other interested parties to develop an analytical method to quantify soy protein in various foods. FDA agrees that having a reliable, accurate analytical method is the ideal means to verify compliance. The agency intends to pursue development of an analytical method for soy protein and would be open to a collaborative effort with industry similar to that undertaken to develop a methodology to measure folate. However, FDA's resources are limited. Moreover, the complicated nature of the analytical problem may take several years to solve. (The agency notes that it took FDA and the industry over 10 years to develop a highly specific antibody for use in the analysis of free folic acid, a task that was relatively simple compared to developing a methodology to measure soy protein in all foods.) Development of a universally applicable analytical method, or multiple methods applicable to different foods or soy protein sources, to measure soy protein in foods is not likely to provide a timely, practical method to assess compliance. Accordingly, the agency is not prepared to authorize use of a soy protein health claim based on use of analytical methodology that does not now exist. Should, however, suitable analytical methodology for soy protein be developed and validated, the agency would propose to amend its regulation to provide for use of such method or methods for compliance verification.

Several comments suggested alternative approaches to measure soy protein. These alternatives involved either calculations based on manufacturers' records or a combination of analysis of total protein content and calculations based on manufacturers' records. One comment noted that some of the soy-based foods that may be eligible to bear the health claim are products whose protein content is derived solely from whole soybeans or from soy protein ingredients such as soy flour, concentrates, or isolates. For such products, the amount of soy protein present is represented by the total protein content, for which an appropriate AOAC method as specified in § 101.9(c)(7) (21 CFR 101.9(c)(7)) is available. For other products that contain protein sources other than soy, the soy protein content would represent a calculable fraction of the total protein content. This comment noted that, based on the known amount of protein per gram of a soy ingredient (soy flour, concentrate, or isolate), one can calculate the quantity of soy protein in a final food product based on the known ratio of added soy products multiplied by the measured protein content. Another comment suggested that an alternative approach could consist of measurement of total protein content followed by calculation, through recipes, of soy protein content based on the ratio of soy protein to total protein in the food. The ratio of soy protein ingredients to total protein ingredients could be determined by reference to nutrient data bases, recipes, purchase orders for ingredients, or other reasonable bases. This comment further noted that the methodology and records that provide appropriate documentation for the calculations required should be available at the food manufacturer's facility or other site for review by FDA investigators. One comment endorsed the outlined approach of employing appropriate record keeping under FDA inspection for assessing compliance. Another comment recommended the use of manufacturing records for tracking both the presence and amount of soy protein in products bearing the soy protein health claim. It further suggested use of such records would provide an accurate and practical method to determine the quantity of soy protein in a food. One comment supported a procedure whereby manufacturers would monitor the level of soy protein addition via batch recordkeeping that the agency would be able to inspect. Another comment recommended that those companies making the claim be responsible for

tracking systems based on formulations and usage.

These comments have persuaded the agency that it should propose an alternative approach for quantifying soy protein in foods until such time as a suitable analytical method for soy protein is available. The agency is persuaded that a procedure employing measurement of total protein and, for some products, calculation of the soy protein content based on information contained in manufacturers' records is an accurate and practical method for assuring that products bearing the proposed health claim meet the requirement for the qualifying level of soy protein. FDA is, therefore, revising proposed § 101.82(c)(2)(ii)(B) to provide for this alternative approach for compliance assessment. Under this proposed approach, FDA will measure total protein in a product by an appropriate method of analysis as given in the ''Official Methods of Analysis of the AOAC International,'' as described at § 101.9(c)(7). If the protein content per reference amount customarily consumed (RACC) fails to meet the qualifying level of soy protein for eligibility to bear the health claim, the product would not be in compliance with § 101.82 and would be misbranded under section 403(a) of the act. If the protein content per RACC equals or exceeds the qualifying level of soy protein and the food contains no sources of protein other than soy, the product would be in compliance with § 101.82. If the protein content per RACC equals or exceeds the qualifying level of soy protein and the food contains a source or sources of protein in addition to soy, then FDA will require that it have access to manufacturers' records to calculate the contribution of soy protein to the total protein content as the means to establish compliance.

C. FDA Inspection of Records

FDA is proposing a method to assess compliance for products that bear the proposed soy protein health claim that would require records inspection in some instances.

When Congress enacted the 1990 amendments, it sought to ensure that the rules pertaining to health and nutrient content claims would be enforceable (see H. Rept. 538, 101st Cong., 2d sess. 8, 9 (1990)). Health and nutrient content claims are intended to make the consumer aware of the nutritional attributes of the labeled food. Because these claims are meant to help consumers maintain healthful dietary practices, it is of the utmost importance that they accurately reflect the nutritional composition of the labeled food. (See 136 Congressional Record, H 12953, October 26, 1990, statement of house floor managers: ''There is a great potential for defrauding consumers if food is sold that contains inaccurate or unsupportable health claims.'')

Under section 701(a) of the act (21 U.S.C. 371(a)), the agency may issue regulations for the efficient enforcement of the act. Courts have recognized that FDA may impose recordkeeping requirements where they effectuate the act's goals. (See *Toilet Goods Association* v. *Gardner*, 387 U.S. 158, 163–64 (1967); and *National Confectioners Association* v. *Califano*, 569 F.2d 690, 693 & n.9 (D.C. Cir. 1978).) The agency has required that records be maintained and made available for inspection by FDA employees in a number of situations. (See, e.g., 21 CFR 108.25(g) and 114.100 (acidified foods); 108.35(h) and 113.100 (thermal processing of low-acid foods); 129.80(h) (bottled drinking water); 172.320 (amino acids); 176.170 (components of paper and paperboard in contact with aqueous and fatty foods); and 179.25(e) (food irradiation).)

In addition, on a number of occasions, FDA has determined that adequate enforcement of labeling rules would be possible only if the agency can review the information that a manufacturer has developed to support the statements on its food labels. For example, in the final rule on serving sizes (58 FR 2229 at 2271, January 6, 1993), FDA provided that manufacturers of aerated foods could substitute a volume-based measure for a weight-based reference amount as the basis for determining a product's serving size. Under the regulation (§ 101.12(e)(21 CFR 101.12 (e)), manufacturers who choose this approach must make available to the agency upon request certain information, including a detailed protocol and records of all data used to arrive at the density-adjusted reference amount (58 FR 2272). In the nutrient content claims final rule (§ 101.13(j)(1)(ii)(A)), FDA also imposed a records requirement on firms that use a broad-based reference nutrient value for claims such as ''light'' (58 FR 2302 at 2365, January 6, 1993). In the **Federal Register** of February 2, 1996 (63 FR 3885), FDA proposed to extend record inspection requirements, in certain circumstances, to records that support the use of certain health claims and nutrient content claims. In that proposed rule, the agency specifically identified concerns about claims that are based on information about a food that is available only to the food manufacturer and without which the agency would be unable to evaluate the truthfulness of the claim (63 FR 3885 at 3887). In that proposed rule, the agency also discussed in detail its legal authority to issue regulations for the efficient enforcement of the act, including regulations that require that access to certain records be provided to the agency (63 FR 3885 at 3888 to 3889).

In the absence of an accurate and reliable analytical method for the quantitation of soy protein, when soy is not the only source of protein in a food, only the manufacturer will have the information required to determine the amount of soy protein per RACC. Therefore, FDA has tentatively concluded that the proposed requirements, which would cover only the proposed soy protein health claim, are necessary for the efficient enforcement of the act. Ensuring the accuracy of claims was an overriding concern of Congress in passing the 1990 amendments. Congress envisioned that, under the act as amended, ''only truthful claims may be made on foods'' (136 Congressional Record H 12953, October 26, 1990, statement of Representative Waxman).

A manufacturer who places a health or nutrient content claim in food labeling must have knowledge that the food qualifies to bear the claim. Congress expected that manufacturers would have to ascertain the nutritional attributes of their food products, through laboratory analysis or otherwise, in order to label those products properly. FDA has stated previously that a food manufacturer is responsible for the accuracy of its food labels (58 FR 2079 at 2163 and 2165). Indeed, a claim in food labeling that calls the consumer's attention to the food's nutritional characteristics is a representation that the manufacturer has evidence that the food meets the requirements for the claim. Thus, making a claim without such a basis would be misleading, in violation of section 403(a) of the act.

FDA, therefore, proposes to require that, in some cases, manufacturers who choose to place a soy protein health claim on the food label or in labeling may do so only if they maintain the information on which the claim is based and make it available for inspection and copying to appropriate regulatory officials upon request. Failure to meet the requirements by maintaining appropriate records and complying with an agency request to examine those records will be a violation of section 403(r) of the act, misbranding the food bearing the claim.

Compliance with the proposed regulation should not entail the creation

of any new information or the compilation of any special records. Rather, the proposed recordkeeping requirement would obligate manufacturers to keep and provide FDA with information that they should already possess. Adequate records may consist of results of appropriate combinations of direct product analyses, data base values, recipe calculations, and purchase orders.

The agency anticipates that manufacturers may have concerns about the confidentiality of the information inspected by the agency under this proposal. Manufacturers should be assured that FDA does not and would not release information that would provide a competitive advantage to another manufacturer (§ 20.61 (21 CFR 20.61)). For example, if a company's records that support the validity of the use of the soy protein health claim in a food's labeling contain confidential information describing product formulation, manufacturing processes, or unique testing methods, the agency would protect this information from public disclosure (§ 20.61). (See also 5 U.S.C. 552(b)(4), 18 U.S.C. 1905, and 45 CFR 5.65.)

The agency notes that, if it does not proceed with this proposal to require access to records to verify the amount of soy protein in foods whose labeling bears a soy protein health claim, it is prepared to authorize use of the claim only on foods whose sole source of protein is from soy. However FDA ultimately proceeds, the agency would propose to amend its regulation to provide for compliance verification based on one or more validated analytical methodologies that are effective in all foods, should such a methodology or methodologies be developed.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

In the analysis of the soy protein proposed rule, FDA examined the rule's effects under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). The agency found that the soy protein proposed rule was not a significant regulatory action under the Executive Order, and that it would not have a significant economic impact on a substantial number of small entities. This proposed modification of the method of assessing compliance does not change those conclusions.

In the following analysis, the agency discusses the benefits and costs associated with the proposed modification and three regulatory alternatives. The four options considered are:

1. Take no action (do not modify proposed method of assessing compliance in the soy protein proposed rule).
2. Modify proposed method of assessing compliance in the soy protein proposed rule as proposed in this document.
3. Use manufacturing records for all products as the method of assessing compliance.
4. Authorize use of the soy protein health claim only on foods whose sole source of protein is from soy.

A. Option One: Take no action (do not modify method of assessing compliance in the soy protein proposed rule)

Taking no action would not affect the actual costs or benefits of the soy protein proposed rule.

B. Option Two: Modify proposed method of assessing compliance in the soy protein proposed rule as proposed in this document

The specification of the method that FDA will use to determine the level of soy protein in products does not lead to additional compliance costs. Use of the proposed soy protein health claim is voluntary; manufacturers choosing to make the claim must determine the level of soy protein in their products, but need not use the same method that FDA proposes to use.

As discussed in section II.B. of this document, some comments on the soy protein proposed rule suggested alternative methods that FDA could use to determine the level of soy protein in products bearing the proposed claim. Having considered these comments, FDA is proposing to modify proposed § 101.82(c)(2)(ii)(B) to provide that FDA will establish the level of soy protein by analyzing the total protein content of a product by an appropriate method of analysis as given in the ''Official Methods of Analysis of the AOAC International'' as described in § 101.9(c)(7). If the product contains sources of protein in addition to soy, the agency will establish the level by using manufacturers' records to calculate the contribution of soy protein to the total protein content.

1. Costs

The proposed modification may reduce the cost to FDA of determining the level of soy protein in some products. This cost is a social cost in the sense that FDA operating funds are derived from public tax revenues. Because this cost is not a compliance cost, reducing it will not affect the compliance costs of the rule but it may increase the net benefits—the costs of implementing a voluntary program must be subtracted from the benefits of that program in order to arrive at net benefits.

As discussed in section II.A. of this document, some of the comments on the method of compliance in the soy protein proposed rule indicated that its use would be costly for some manufacturers. This proposed modification will reduce these distributive effects of the soy protein proposed rule, and so eliminate the equity issue raised in those comments.

2. Benefits

As discussed in section II.A. of this document, some of the comments on the soy protein proposed rule argued that the method for assessing compliance set forth in that proposal is not appropriate for the quantitation of soy protein in many of the products that may be eligible to bear the health claim. Use of that method would therefore reduce the information value of the health claim. This proposed modification would increase the information value of the health claim by increasing the accuracy of the statement concerning the level of soy protein in particular products.

The proposed modification might also reduce the benefits of the soy protein proposed rule if the requirement that FDA have access to records under the modified method were to discourage use of the proposed health claim and reduce the number of products bearing the claim. In some comments, firms indicated that the agency should use records to assess compliance, so the agency believes that many firms would still be prepared to use the claim on their food products. Most firms probably already keep the relevant records for business purposes, including: (1) Product recipes and formulations in order to make consistent products, (2) nutrient analyses or databases in order to comply with the required Nutrition Facts panel, and (3) purchase orders for normal business purposes. Therefore, the agency does not believe that the proposed modification will significantly reduce the benefits of the proposed health claim. FDA requests comments on whether, and the extent to which, the proposed modification would discourage use of the claim.

C. Option Three: Use manufacturing records for all products as the method of assessing compliance

As discussed in section II.B. of this document, FDA believes that there is no validated analytical method currently available that the agency could use instead of the analytical method proposed in the soy protein proposed rule. However, some comments on the soy protein proposed rule recommended that FDA use manufacturing records for all products, not merely for those products that contain protein from sources other than soy.

1. Costs

Using manufacturing records in all cases would generate higher costs for FDA than using the proposed modified method for products that have only one source of protein. It would cost more to use manufacturing records to determine the level of soy protein in products whose only source of protein is soy than it would cost to determine the level of soy protein in those products by using only an appropriate analytical method.

2. Benefits

Using manufacturing records in all cases may reduce the benefits of the soy protein proposed rule more than the proposed modified method, if more manufacturers would be discouraged from using the claim because they would be required to provide FDA with access to their records.

D. Option 4: Authorize use of the soy protein health claim only on foods whose sole source of protein is from soy

As stated in section II.C. of this document, if FDA does not proceed with the proposed modified method to verify the amount of soy protein in some foods using records, it is prepared instead to authorize use of the claim only on foods whose sole source of protein is from soy. Under this option, fewer products would be able to make claims under the soy protein proposed rule. The costs and benefits of the rule would therefore be less than under the modification proposed in this rule.

V. Paperwork Reduction Act of 1995

This proposed rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. A description of these requirements is given below with an estimate of the annual recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information; including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Title: Record Retention Requirements for the Soy Protein/CHD Health Claim

Description: Section 403(r) of the act requires that food bearing a health claim authorized by regulation on a petition to the agency be labeled in compliance with that regulation issued by FDA. In the soy protein proposed rule (63 FR 62977 at 62994), FDA stated its tentative conclusion that the labeling requirements proposed for soy protein are not subject to review by OMB because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, the proposed food labeling health claim on the association between soy protein and reduced risk of CHD would be a ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)). The regulation set forth in this proposed rule would authorize the use in food labeling of a health claim about the relationship between soy protein and CHD. This proposal would also require that a manufacturer of a product bearing the proposed soy protein health claim whose product contains non-soy sources of protein retain all the records that permit the calculation of the ratio of soy protein to other sources of protein in the food. The manufacturer of such a food product would be required to make those records available for review and copying by appropriate regulatory officials upon request and during site visits.

Description of Respondents: Businesses or others for-profit.

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
101.82(c)(2)(ii)(B)	25	1	25	1	25

[1] There are no capital costs or operation and maintenance costs associated with this collection of information.

FDA believes that the records that a manufacturer would retain would be records that a prudent business would obtain and retain as a normal part of doing business. The requirements contained in this proposal would require only a minimal burden, no more than one hour per response, from respondents.

In compliance with 44 U.S.C. 3507(d), the agency has submitted the information collection requirements of the proposed rule to OMB for review. Interested persons are requested to send comments regarding information collection by September 22, 1999 to the Office of Information and Regulatory Affairs, OMB (address above), ATTN: Desk Officer for FDA.

VI. Proposed Effective Date

FDA is proposing to make these regulations effective upon publication in the **Federal Register** of a final rule based upon this proposal.

VII. Comments

Interested persons may, on or before September 22, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This proposed rule is not a ''technical regulation'' as defined in 19 U.S.C. 2576b(7) because it is not mandatory that a soy protein health claim be placed on the label or in the labeling of qualifying foods. Therefore, the

requirement for a 75-day comment period for a proposed technical regulation found in Executive Order 12889, ''Implementation of the North American Free Trade Agreement,'' does not apply to this proposed rule. In addition, this proposal addresses only the narrow issue of the method FDA will use to verify that foods bearing a soy protein health claim contain the required amount of soy protein. Moreover, under section 403(r)(4)(A)(i) of the act, if the agency issues a proposed regulation on a health claim petition, the agency is to complete the rulemaking within 540 days of the date the agency receives the petition (see also § 101.70(j)(4)(ii)). Therefore, FDA finds that there is good cause under 21 CFR 10.40(b)(2) to provide 30 days, rather than 60 days, for public comment on this proposed rule.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Protein Technologies International, Inc., ''Health Claim Petition,'' May 4, 1998 [CP1, vol. 1–3]

2. Protein Technologies International, Inc., ''Addendum to Health Claim Petition,'' August 10, 1998 [CP1, vol. 4]

3. Crimes, A. A., F. J. Bailey, and C. H. S. Hitchcock, ''Determination of Foreign Proteins in Meat Products,'' *Analytical Proceedings*, 18:164–166, 1981.

4. Hitchcock, C. H. S., F. J. Bailey, A. A. Crimes, D. A. G. Dean, and P. J. Davis, ''Determination of Soya Proteins in Food Using an Enzyme-linked Immunosorbent Assay Procedure,'' *Journal of the Science of Food and Agriculture*, 32:157–165, 1981.

5. Griffith, N. M., M. J. Billington, A. A. Crimes, and C. H. S. Hitchcock, ''An Assessment of Commercially Available Reagents for an Enzyme-linked Immunosorbent Assay (ELIZA) of Soy Protein in Meat Products,'' *Journal of the Science of Food and Agriculture*, 35:1255–1260, 1984.

6. Olsman, W. J., S. Dobbelaero, and C. H. S. Hitchcock, ''The Performance of an SDS–PAGE and ELISA Method for the Quantitative Analysis of Soya Protein in Meat Products, an International Collaborative Study,'' *Journal of the Science of Food and Agriculture*, 36:499–507, 1985.

7. McNeal, F. E., ''Semiquantitative Enzyme-linked Immunosorbent Assay of Soy Protein in Meat Products: Summary of Collaborative Study,'' *Journal of the Association of Official Analytical Chemists*, 71(2):443, 1988.

8. Yasumoto, K, M. Sudo, and T. Suzuki, ''Quantitation of Soya Protein by Enzyme-linked Immunosorbent Assay of its Characteristic Protein,'' *Journal of the Science of Food and Agriculture*, 50:377–389, 1990.

List of Subjects in 21 CFR Part 101

Food labeling, Incorporation by reference, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

2. In § 101.82, as proposed to be added at 63 FR 62977 at 62997, November 10, 1998, revise paragraph (c)(2)(ii)(B) to read as follows:

§ 101.82 Health claims: Soy protein and risk of coronary heart disease (CHD).

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) FDA will assess qualifying levels of soy protein in the following fashion: FDA will measure total protein content by the appropriate method of analysis given in the ''Official Methods of Analysis of the AOAC International,'' as described at 21 CFR 101.9(c)(7). Interested persons can obtain copies of the ''Official Methods of Analysis of the AOAC International'' from the Association of Official Analytical Chemists, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877–2504, or may examine copies at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC. For products that contain no sources of protein other than soy, FDA will consider the amount of soy protein as equivalent to the total protein content. For products that contain a source or sources of protein in addition to soy, FDA will, using the measurement of total protein content, calculate the soy protein content based on the ratio of soy protein ingredients to total protein ingredients in the product. FDA will base its calculation of the ratio of soy protein ingredients to total protein ingredients on manufacturers' information such as nutrient data bases or analyses, recipes or formulations, purchase orders for ingredients, or other reasonable bases. Manufacturers must maintain records that permit such calculations for as long as the products are marketed. Manufacturers must make these records available for authorized inspection and copying by appropriate regulatory officials and manufacturers must submit these records to those regulatory officials upon request.

* * * * *

Dated: August 16, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–21852 Filed 8–19–99; 10:15 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[PA118–4080b; FRL–6425–9]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Pennsylvania; Large Municipal Waste Combustors (MWCs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to conditionally approve the municipal waste combustor (MWC) 111(d)/129 plan submitted by the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, on April 27, 1998, and amended on September 8, 1998. In the final rules section of the **Federal Register**, EPA is conditionally approving the plan. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received in writing by September 22, 1999.

ADDRESSES: Comments may be mailed to Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at topsale.jim@epamail.gov.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Authority: 42 U.S.C. 7401–7642.

Dated: August 4, 1999.

W. Michael McCabe,

Regional Administrator, EPA.

[FR Doc. 99–21659 Filed 8–20–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990713190–9190–01; I.D. 041599B]

RIN 0648–AH63

Fisheries of the Northeastern United States; Amendment 1 to the Fishery Management Plan for the Atlantic Bluefish Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 1 (Amendment 1) to the Fishery Management Plan for the Atlantic Bluefish Fishery (FMP). This proposed rule would: Implement permit and reporting requirements for commercial bluefish vessels, dealers, and party/charter boats; implement permit requirements for bluefish vessel operators; define a Bluefish Monitoring Committee (Committee) that would annually recommend the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) the total allowable level of landings (TAL) and other restrictions necessary to achieve the target fishing mortality rates (F) specified in the FMP; establish a framework adjustment process; establish a 9-year stock rebuilding schedule; establish a commercial quota with allocations to states; and establish a recreational harvest limit. Amendment 1 also addresses the new requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act (SFA). Two primary examples of these requirements are establishing a rebuilding plan to rebuild the bluefish stock from an overfished condition and describing and identifying essential fish habitat (EFH) for bluefish. The purpose of this rule is to control fishing mortality of bluefish and rebuild the stock.

DATES: Comments must be received on or before October 7, 1999.

ADDRESSES: Comments on this proposed rule should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on Bluefish Plan Proposed Regulations.''

Comments on the collection-of-information requirements that would be established by this proposed rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer) and to NMFS (See **ADDRESSES**).

Copies of Amendment 1, its Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA) and the Final Environmental Impact Statement (FEIS) are available from Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901–6790.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 978–281–9104.

SUPPLEMENTARY INFORMATION:

Background

The FMP was adopted by the Council and the Commission in October 1989 and approved by NMFS in March 1990. In 1996, the Council and the Commission began development of Amendment 1 to address the need to broaden the suite of management measures that could be used to reduce bluefish fishing mortality.

The enactment of the SFA in October 1996 further prompted the Council to take action to end overfishing on the bluefish stocks. The 23rd Northeast Stock Assessment Workshop, held in 1997, concluded that the Atlantic bluefish stock was at a low level of abundance and was overexploited. NMFS declared the bluefish stock to be overfished in its 1997 and 1998 Reports to Congress on the Status of Fisheries in the United States.

NMFS published a notice of availability for Amendment 1 in the **Federal Register** on April 30, 1999. The public comment period ended June 29, 1999. All comments received through June 29, 1999, were considered in the approval/disapproval decision on Amendment 1. Amendment 1 was partially approved by NMFS on behalf of the Secretary of Commerce on July 29, 1999. NMFS disapproved the *de minimis* provision related to state allocations of the commercial quota, the description and analysis of fishing communities, and the portion of the EFH section assessing the effects of fishing gear on bluefish EFH. Copies of Amendment 1 are available from the Council upon request (see **ADDRESSES**).

Overfishing Definition and Rebuilding Schedule

Amendment 1 revises the definitions of overfishing and overfished in the FMP to include an F and biomass (B) component, respectively. Overfishing is defined as occurring when F is greater than the maximum F threshold, specified as F_{msy} = 0.4; and the bluefish stock will be considered overfished when biomass is less than the minimum biomass threshold, specified as $1/2B_{msy}$ = 118.5 million (mil) lb (53,750 mt). The long-term F target would be 90 percent of F_{msy} and the long-term B target would be B_{msy}. The Council plans in Amendment 1 to rebuild the bluefish stock to B_{msy} over a 9-year period. In the first 2 years of rebuilding, F would remain at the current level, F=0.51, in years 3 through 5 it would be reduced to F=0.41, and in years 6 through 9 it would be reduced to F=0.31. Once rebuilding is achieved, F will be set at F=0.36, and continue to be that value as long as the stock is not overfished.

Annual Adjustment Process and Committee

This rule would define the composition of a Bluefish Monitoring Committee as staff representatives from the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils, the NMFS Northeast Regional Office, the NMFS Northeast Fisheries Science Center, and the Commission. The Committee would review annually the best available data and recommend to the Council and the Commission commercial (annual quota, minimum fish size, and minimum mesh size) and recreational (possession and size limits, and seasonal closures) measures designed to assure that the target F for bluefish for that given year is not exceeded.

EFH for Bluefish

Section 2.2.2.2 of Amendment 1 describes and identifies EFH for bluefish with large areas of oceanic waters identified as EFH for eggs and larvae, and major estuaries from Maine through Florida identified as EFH for juveniles (generally North Atlantic estuaries from June through October, Mid-Atlantic estuaries from May through October, and South Atlantic estuaries from March through December). For adults, EFH in estuaries is similar to that of juveniles on a seasonal basis, and over a wide area of the continental shelf throughout the

year. The amendment does not identify any habitat areas of particular concern for bluefish. While bluefish are pelagic and wide ranging, there is some linkage between juvenile bluefish and submerged aquatic vegetation (SAV). Certain estuarine fishing gear effects SAV and bluefish EFH. The effects of this gear are not analyzed by Amendment 1; therefore, NMFS has disapproved this portion of the amendment.

Recreational Harvest Limit and Commercial Quotas

This proposed rule would establish a procedure to specify a TAL divided between the recreational and commercial fisheries. The TAL would be set annually, based on the F values specified in the rebuilding schedule, and a target F=0.36, once rebuilding is achieved. The recreational fishery would have a harvest limit of 83 percent of the TAL, and the commercial fishery would have a quota of 17 percent of the TAL. These percentages of the TAL are based on the average catch composition of the two fisheries from 1981 through 1989. The commercial quota would be distributed to the states based on their percentage share of commercial landings during this time period as designated in Table 48 of Amendment 1 (See also § 648.160(e)(1) of this rule). Amendment 1 provides a procedure where the commercial TAL could be set higher than 17 percent, up to 10.5 mil lb (4.8 mil kg) (the average commercial landings for the period 1991–1996), if the recreational fishery is not likely to land its annual allocation, based on a projection of the most recently available recreational landings data, and provided that the combination of the projected recreational landings and commercial quota does not exceed the TAL. The Council provided this procedure to ensure that commercial landings would not be unduly constrained under low allowable harvest levels and proportionally low recreational landings.

1999 Allocations for the Commercial Fishery

States participating in the bluefish fishery have already taken action for 1999 in accordance with the rebuilding schedule of Amendment 1 through the Commission and their own existing administrative programs for managing quotas in the commercial fishery for bluefish. The TAL for the bluefish fishery for 1999 is 36.84 mil lb (16.71 mil kg), with 5.93 mil lb (2.69 mil kg) (17 percent) going to the commercial fishery, and 30.91 mil lb (14.02 mil kg) (83 percent) going to the recreational fishery. There are not enough data for the 1999 recreational fishery at this time to warrant increasing the allocation to the commercial fishery above 17 percent (as discussed in the aforementioned procedure for increasing an annual commercial TAL above 17 percent up to 10.5 mil lb (4.8 mil kg)). The proposed state-by-state allocation of the commercial quota for 1999, based on the percentage share, is as follows:

State	Pounds	Kilograms
Maine	39,802	18,054
New Hampshire	24,675	11,193
Massachusetts ..	399,876	181,384
Rhode Island	405,316	183,851
Connecticut	75,390	34,197
New York	618,275	280,450
New Jersey	882,078	400,110
Delaware	111,817	50,720
Maryland	178,712	81,064
Virginia	707,240	320,804
North Carolina ..	1,908,731	865,800
South Carolina ..	2,095	950
Georgia	566	257
Florida	598,900	271,661
Totals	5,953,473	2,700,495

Framework Adjustment Process

In addition to the annual review and modifications to management measures associated with the Committee process, under Amendment 1 and the proposed rule, the Council could add or modify management measures through a streamlined public review process called a framework adjustment. As such, management measures that have been identified in the plan could be implemented or adjusted at any time during the year following consideration of the measures and associated analyses during at least two Council meetings. The recommended management measures then could be implemented through a final rule without first publishing a proposed rule. The framework process would allow the Council to consider gear restrictions, minimum and maximum fish size, permitting restrictions, changes in the recreational possession limit, recreational and commercial seasons, closed areas to address overfishing if it is deemed necessary in the future, description and identification of essential fish habitat (EFH) and fishing gear management measures that impact EFH, and description and identification of habitat areas of particular concern.

Permit and Reporting Requirements

This rule proposes to add bluefish permit and reporting requirements that mirror similar requirements for other Northeast fisheries. These measures include new permitting requirements for Federal commercial bluefish vessels, bluefish charter and party boats, bluefish dealers, and bluefish vessel operators, and new reporting requirements for bluefish dealers and owners or operators of commercial bluefish vessels and bluefish charter and party boats. In addition to logbook reporting, dealers would be required to participate in the Northeast Interactive Voice Reporting (IVR) system to assure timely reports for purposes of quota monitoring.

Implementation of a commercial bluefish vessel permitting system represents a modification of the present system where individuals, and not vessels, are issued a permit to sell bluefish. Under the current bluefish regulations, any person selling a bluefish harvested from the exclusive economic zone is identified as a commercial fisherman and must have a commercial fishing permit issued by a state or by NMFS that allows the sale of bluefish (i.e., the individual is licensed). The new management measure would allow the sale of bluefish harvested in Federal waters only from vessels issued a Federal permit. The Council believes that the bulk of the bluefish that enters the market is harvested by commercial vessels. However, at Council and committee meetings, it has been noted that certain individuals, such as those who fished from a vessel they did not own or operate and then sold their catch, would be affected by the changeover to a vessel permit. The individuals would be subject to the recreational possession limit and would no longer be able to sell bluefish.

Management Measure Returned to the Council

Pursuant to section 304(b)(1)(B) of the Magnuson-Stevens Act, NMFS returned to the Council the *de minimus* provision contained in Amendment 1 and disapproved the provision on July 29, 1999. NMFS determined that this measure is inconsistent with national standard 1 of the Magnuson-Stevens Act, which requires that management measures prevent overfishing. This provision lacks any clear obligation on the part of the *de minimus* state to close its commercial bluefish fishery once its quota is harvested and could result in overfishing of the bluefish stock. If *de minimus* status does not, at the very least, require a state to impose landing constraints, the provision may encourage owners of vessels that have not traditionally landed in that state to land amounts of bluefish much greater than they could land in their home port states. This could result in the state's *de minimus* quota being rapidly exceeded

and compound the overfishing situation if a *de minimus* state is not required to close its fishery when its *de minimus* quota is harvested. NMFS described its determination on this measure in a letter that it sent to the Council. As indicated in section 304(b)(2) of the Magnuson-Stevens Act, the Council may revise this measure and submit it to the Secretary of Commerce for reevaluation under section 304(b)(1) of the Magnuson-Stevens Act.

Classification

NMFS determined on July 29, 1999, that the amendment that this rule would implement is consistent with the Magnuson-Stevens Act and other applicable laws, with the exception of the *de minimus* provision, the fishing communities section, and the portion of the EFH section dealing with the effect of fishing gear on bluefish EFH. NMFS, in making that determination, took into account the data, views, and comments received on Amendment 1 through June 29, 1999.

The Council prepared an initial regulatory flexibility analysis (IRFA) that describes the impact this proposed rule, if adopted, would have on small entities. Reasons why the action is considered, as well as the objectives and legal basis of the rule are described in the preamble to this rule and are not repeated here. The analyses of the impacts on small entities attributable to the preferred and other alternative management measures found in Amendment 1 are discussed below. Since the final rule implementing Amendment 1 would not become effective until the fall of 1999, this summary discusses impacts to small entities in the year 2000, the projected first full year under the amendment. An assumption of constant prices is applied throughout the summary. It is also assumed that the 2000 fishery will be similar to 1997 in terms of commercial and recreational landings.

Impact of the Commercial Vessel Permit

NMFS recently completed an analysis of NMFS bluefish operator permit holder files. In the full permit year of 1998, there were 1,126 Federal bluefish permits issued to individuals. The Federal individual bluefish permit file was merged with the vessel owner database for Federal permits by permit holder name to identify the number of Federal bluefish individual permits associated with vessel ownership. It is estimated that 190 permits held by individuals are associated with vessel ownership. As such, these individuals would be allowed to continue to sell bluefish caught from their vessels, as long as they obtain a bluefish vessel permit. Over 32 percent (305) of the individuals with no vessel status (936) claimed that 5-percent or more of their annual income is derived from the sale of bluefish. Therefore, the Council concluded that the proposed action could result in a significant economic impact (result in a 5 percent or more revenue loss) for a substantial (20 percent or more) number of small entities (participants). It is unclear how many of these individuals would make the required capital investment necessary to purchase a vessel, which would allow them to apply for a bluefish vessel permit. NMFS seeks public comment on this issue.

Also, it is possible that some of these individuals took party and charter recreational trips with the sole purpose of landing bluefish to be sold commercially. There is no indication that the implementation of this measure would lead to any substantive decline in the demand for party and charter boat trips. Anglers that fish from party and charter boats fish for multiple species, and only a few anglers would take recreational trips to target solely bluefish to be sold commercially.

The Council, in Amendment 1, acknowledges that since there have been no mandatory reporting requirements in the past for this fishery, it is not possible to determine the number of individuals holding bluefish permits who actually land and sell bluefish. The individual permit holders affected by this rule may include individuals who exceeded the bag limit to stock their freezers or feed the poor in their communities, for example. In addition, crew members of party boats have supplemented their wages by selling bluefish under the individual permit. Since arrangements between owner/operators and their crew differ individually and by region, it is difficult to ascertain the number of crew likely to be affected.

The Council assumed that individuals who were not registered as owners of federally permitted vessels did not own a vessel and would not qualify for a vessel permit under Amendment 1. However, many of these individuals probably own vessels that are used for recreational fishing only. This is especially significant, given that the majority of the individuals who currently hold individual commercial permits reside in New Jersey, a state that does not issue its own commercial permit, but relies on the Federal individual commercial permit. Since New Jersey does not regulate commercial vessels harvesting bluefish through permits, owners of recreational boats would need only to obtain a Federal individual commercial permit to land and retain more than the bag limit. Therefore, the Council's assumption regarding the percentage of income claimed and the assumption that those who do not own a federally permitted vessel do not, indeed, own a vessel, likely underestimates the number of individuals who would qualify for Federal commercial vessel permits if this proposed rule is implemented. Notwithstanding the above discussion, it is likely that some portion of the number of individual permit holders, although immeasurable, may be vulnerable to economic impacts as a result of this action. The Council notes that negative economic impacts on small entities would be mitigated by potential increases in harvest associated with a rebuilt bluefish stock.

The Council also considered the status quo alternative of continuing the issuance of permits to individuals. Although this would mitigate the economic impacts of the proposed vessel permitting scheme, the Council notes that under individual permitting, the monitoring of the quota system could potentially be undermined, because it may be difficult to contact individuals with timely notifications or obtain information required for quota reports. Implementation and enforcement of commercial closures and commercial minimum fish sizes that are essential to managing the fishery would be compromised by the continued permitting of individuals. Furthermore, harvesting capacity or fishing power could not be evaluated under a regime of individual permits.

Impacts of Quota Allocation

The Council considered, but rejected, several time periods other than 1981–1989, upon which to base allocation of the total annual quota between the commercial and recreational sectors, and state-by-state allocations of the commercial quota. Other time periods considered were 1981–1993 and 1985–1989.

The Council chose the time period 1981–1989 for the preferred alternative because it reflects the composition of the overall fishery in a period of relatively high stock abundance and stability. Furthermore, the Council believed that basing the allocation on proportional catch after 1989 would be biased, since restrictions of 10 fish per individual angler were introduced by the FMP in 1990, while no restrictions were placed on the commercial fishery, e.g., there are no trip limits, minimum fish size, or minimum mesh size.

In 1997, commercial landings accounted for 39 percent of total landings. The commercial allocation (17 percent) under the preferred alternative would represent a substantial reduction relative to the 1997 landings. The Council, recognizing this disparity, decided to allow the commercial quota to be increased up to 10.5 mil lb (4.76 mil kg), the average commercial landings for the period 1990–1997, under the following condition—if 17 percent of the TAL (the commercial sector) for a given year is initially calculated to be less than 10.5 mil lb (4.76 mil kg), then the quota could be increased from the level associated with 17 percent of the TAL up to 10.5 mil lb (4.76 mil kg).

The overall quota for 2000, per the preferred rebuilding schedule, would be 43.08 mil lb (19.54 mil kg), resulting in allocations of 7.32 mil lb (3.32 mil kg) for the commercial fishery and 35.80 mil lb (16.23 mil kg) for the recreational fishery. Using 1997 data (9.305 mil lb (4.21 mil kg)) for comparison, commercial vessels in the 2000 fishery could expect to experience increased revenues, at least in the short term, since it is assumed that the commercial fishery would be able to harvest 10.5 mil lb (4.76 mil kg). This is based on the underlying assumption that the recreational fishery would not be projected to take more than 32.62 mil lb (14.80 mil kg), given that landings for the recreational fishery have been declining since 1991 and were only 14.9 mil lb (6.76 mil kg) in 1997.

In the absence of an unpredicted surge in recreational landings in 1999, 10.5 mil lb (4.76 mil kg) would be allocated to the commercial fishery (7.32 mil lb (3.32 mil kg) specified, plus 3.18 mil lb (1.44 mil kg) from the projected surplus recreational allocation). It should be noted that in the event recreational landings are projected to be more than 35.80 mil lb (16.23 mil kg), the 2000 commercial quota would be 7.32 mil lb (3.32 mil kg), and commercial bluefish fishermen would face economic impacts associated with a 21-percent reduction of commercial landings from 9.3 mil lb. (4.21 mil kg) in 1997.

Using the 1981–93 and 1985–89 periods for analyses would yield the same result as above, if the assumption that the commercial sector would be able to harvest 10.5 mil lb (4.76 mil kg) remains valid. The 1981–93 period would result in a 19/81 percent commercial/recreational split, while the 1985–89 period would result in an 18/82 percent split.

Impacts to individual state quotas from any of the three alternative quota allocations would also be positive, assuming that the commercial allocation for the 2000 fishery is specified at 10.5 mil lb (4.76 mil kg). The difference in revenues going to the various states from the distribution of quota is negligible when the preferred period is compared to the two alternative periods. This falls within a range of 0.003 to 2.300 percent.

There would be no substantial short-term economic impact on businesses that service the recreational fishery (e.g., marina, bait shops) from the recreational quota. The recreational fishery could take up to 35.80 mil lb (16.23 mil kg) in 2000, while estimated harvest in 1997 was only 14.9 mil lb (6.76 mil kg) in 1997, leaving a projected surplus of 20.9 mil lb (9.48 mil kg).

Impact of Permitting and Reporting Requirements

The alternatives concerning vessel and dealer permitting and reporting would have no effect on revenues and would represent a minute portion of the cost of doing business. The Council estimated that 249 new vessel applicants would each spend $7.50 to apply for a permit and $20.00 per year for reporting requirements. No special knowledge is required to fill out the permit application.

Impact of a Commercial Minimum Fish Size

With the exception of the pound net fishery and long haul seine fishery in North Carolina, the preferred alternative of a 12-inch (30.48 cm) minimum fish size would not have a significant impact on revenues. Data suggest that from 1987–1996 only 1 percent of all fish taken by all gear types in the commercial fishery were less than 12 inches (30.48 cm). There could be significant losses in revenue to the pound net fishery and the long haul seine fishery in North Carolina where 64.2 and 53.7 percent of the total bluefish catch, respectively, may be lost due to this minimum fish size restriction. However, the reduction in gross revenue is not expected to be significant for these gear types in terms of their gross revenue from all fishing activities. Although the effect of other minimum fish sizes is not known, it can be construed that the greater the minimum fish size, the larger the impact.

Impact of the Recreational Minimum Size Limit

The recreational minimum size limit of 12 inches may effect revenues earned by party/charter boats. The decrease in revenues would be attributable to anglers' perception of the fishing experience in regard to keeping or releasing small fish and how this relates to demand for party/charter boat trips. The greatest impact would be in Rhode Island, Connecticut, and New York, where the minimum size limit would impact established ''snapper'' fisheries. As alternative sizes increase, the economic effect would be diminished. However, with limited data, it is not possible to project at what size the negative impact would dissipate.

Impacts of Rebuilding Strategies

The Council predicts that the preferred and other alternative rebuilding strategies will have positive long-run economic impacts. In the short term, the impact on revenues for the 2000 fishery for all alternative rebuilding strategies depends on the ability to transfer quota from the recreational to the commercial fishery. Since the Council has decided to retain a quota of 5.95 mil lb for the commercial fishery in 1999, any transfers above the levels discussed in the previous section on quota allocation would have a positive economic impact on the commercial fishery in the year 2000.

The Council prepared a FEIS for Amendment 1. A notice of availability for the FEIS was published in the **Federal Register** on June 25, 1999 (64 FR 34235). A copy of the FEIS may be obtained from the Council (see **ADDRESSES**).

This rule has been determined to be significant for the purposes of Executive Order 12866.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This rule contains collection-of-information requirements subject to the PRA. These collection-of-information requirements have been submitted to the Office of Management and Budget for approval. The public reporting burden for vessel logbooks is estimated to average 12 minutes per response. The reporting burden for dealer reports is estimated to average 4 minutes for the IVR system and estimated to average 2 minutes for completing NOAA Form 30–80. The reporting burden for new requirements is estimated to be 30 minutes for vessel and charter/party vessel permit applications, 12 minutes for dealer permit applications, 45 minutes for vessel identification, 2 minutes for completing the employment

section of the Processed Products Report, and 60 minutes for states to apply for a transfer of commercial bluefish quota. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Please send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 16, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.2, the definition for ''Bluefish Committee'' is removed and a new definition for ''Bluefish Monitoring Committee'' is added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Bluefish Monitoring Committee means a committee made up of staff representatives of the Mid-Atlantic Fishery Management Council, the New England Fishery Management Council, and South Atlantic Fishery Management Council, the NMFS Northeast Regional Office, the NMFS Northeast Fisheries Science Center, and the Commission. The Mid-Atlantic Fishery Management Council's Executive Director or a designee chairs the committee.

* * * * *

3. In § 648.4, the section heading and paragraphs (a)(8), (b) and (c)(2)(i) are revised, and paragraph (c)(3) is removed, to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(8) *Atlantic bluefish vessels*—(i) *Commercial.* Any vessel of the United States including party and charter boats not carrying passengers for hire, that fishes for, possesses, or lands Atlantic bluefish in or from the EEZ in excess of the recreational possession limit specified at § 648.164 must have been issued and carry on board a valid commercial bluefish vessel permit.

(ii) *Party and charter vessels.* Any party or charter boat must have been issued and carry on board a valid party or charter boat a permit to fish for bluefish if it is carrying passengers for hire. Such vessel must observe the possession limits established pursuant to § 648.164, and the prohibitions on sale specified in § 648.14(w).

(b) *Permit conditions.* Any person who applies for a fishing permit under this section must agree as a condition of the permit that the vessel and the vessel's fishing activity, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken or landed), are subject to all requirements of this part, unless exempted from such requirements under this part. All such fishing activities, catch, and gear will remain subject to all applicable state requirements. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ for any species managed under this part must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a summer flounder moratorium, scup moratorium, black sea bass moratorium or bluefish commercial vessel permit must also agree not to land summer flounder, scup, black sea bass, or bluefish, respectively, in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for that state or period has been harvested and that no commercial quota is available for the respective species. A state not receiving an allocation of summer flounder, scup, black sea bass, or bluefish, either directly or through a coastwide allocation, is deemed to have no commercial quota available. Owners or operators fishing for surf clams and ocean quahogs within waters under the jurisdiction of any state that requires cage tags are not subject to any conflicting Federal minimum size or tagging requirements. If a surf clam and ocean quahog requirement of this part differs from a surf clam and ocean quahog management measure required by a state that does not require cage tagging, any vessel owners or operators permitted to fish in the EEZ for surf clams and ocean quahogs must comply with the more restrictive requirement while fishing in state waters. However, surrender of a surf clam and ocean quahog vessel permit by the owner by certified mail addressed to the Regional Administrator allows an individual to comply with the less restrictive state minimum size requirement, as long as fishing is conducted exclusively within state waters. If the commercial black sea bass quota for a period is harvested and the coast is closed to the possession of black sea bass north of 35°15.3′ N. lat., any vessel owners that hold valid commercial permits for both the black sea bass and the NMFS Southeast Region Snapper-Grouper fisheries may surrender their moratorium Black Sea Bass permit by certified mail addressed to the Regional Administrator and fish pursuant to their Snapper-Grouper permit, as long as fishing is conducted exclusively in waters, and landings are made, south of 35°15.3′ N. lat. A moratorium permit for the black sea bass fishery that is voluntarily relinquished or surrendered will be reissued upon the receipt of the vessel owner's written request after a minimum period of 6 months from the date of cancellation.

(c) * * *

(2) * * * (i) An application for a permit issued under this section, in addition to the information specified in paragraph (c)(1) of this section, also must contain at least the following and any thing else required by the Regional Administrator: Vessel name; owner name or name of the owner's authorized representative, mailing address, and telephone number; USCG documentation number and a copy of the vessel's current USCG documentation or, for a vessel not required to be documented under 46 U.S.C., the vessel's state registration number and a copy of the current state registration; a copy of the vessel's current party/charter boat license (if applicable); home port and principal port of landing; length overall; GRT; NT; engine horsepower; year the vessel was built; type of construction; type of propulsion; approximate fish hold

capacity; type of fishing gear used by the vessel; number of crew; number of party or charter passengers licensed to be carried (if applicable); permit category; if the owner is a corporation, a copy of the current Certificate of Incorporation or other corporate papers showing the date of incorporation and the names of the current officers of the corporation, and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the current Partnership Agreement and the names and addresses of all partners; if there is more than one owner, the names of all owners having a 25-percent interest or more; and permit number of any current or, if expired, previous Federal fishery permit issued to the vessel.

* * * * *

4. In § 648.5, the first sentence of paragraph (a) is revised to read as follows:

§ 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing sea scallops in excess of 40 lb (18.1 kg), NE multispecies, monkfish, mackerel, squid, butterfish, scup, black sea bass, or bluefish, harvested in or from the EEZ, or issued a permit for these species under this part, must have been issued under this section and carry on board, a valid operator's permit. * * *

* * * * *

5. In § 648.6, paragraph (a) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) *General.* All NE multispecies, monkfish, sea scallop, summer flounder, surf clam, ocean quahog, mackerel, squid, butterfish, scup, black sea bass, or bluefish dealers and surf clam and ocean quahog processors must have been issued under this section, and have in their possession a valid permit for these species.

* * * * *

6. In § 648.7, the first sentence of paragraphs (a)(1)(i) and (a)(3)(i) and the heading and first sentence of paragraph (b)(1)(i) are revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) * * *

(1) * * *

(i) All summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, monkfish, Atlantic mackerel, squid, butterfish, or bluefish dealers must provide: Dealer name and mailing address; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, which ever is applicable) of vessels from which fish are landed or received; trip identifier for a trip from which fish are landed or received; dates of purchases; pounds by species (by market category, if applicable); price per pound by species (by market category, if applicable); port landed; signature of person supplying the information; and any other information deemed necessary by the Regional Administrator. * * *

* * * * *

(3) * * *

(i) Summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, Atlantic mackerel, squid, butterfish, and bluefish dealers must complete the ''Employment Data'' section of the Annual Processed Products Report; completion of the other sections of that form is voluntary. * * *

* * * * *

(b) * * *

(1) * * *

(i) *Owners or operators of vessels issued a summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, Atlantic mackerel, squid, butterfish, or bluefish permit.* The owner or operator of any vessel issued a permit for summer flounder, scup, black sea bass, Atlantic sea scallops, NE multispecies, Atlantic mackerel, squid, butterfish, or bluefish must maintain on board the vessel, and submit, an accurate daily fishing log report for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. * * *

* * * * *

7. In § 648.11, the first sentence of paragraph (a) and paragraph (e) are revised to read as follows:

§ 648.11 At-sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, or NE multispecies, or monkfish, or Atlantic mackerel, squid, butterfish, or scup, or black sea bass, or bluefish, or a moratorium permit for summer flounder, to carry a NMFS-approved sea sampler/observer. * * *

* * * * *

(e) The owner or operator of a vessel issued a summer flounder moratorium permit, or a scup moratorium permit, or a black sea bass moratorium permit, or a bluefish permit, if requested by the sea sampler/observer also must:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, summer flounder, scup, or black sea bass, or bluefish, or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, summer flounder, scup, or black sea bass, or bluefish, or other specimens taken by vessel.

* * * * *

8. In § 648.12, the introductory text is revised to read as follows:

§ 648.12 Experimental fishing.

The Regional Administrator may exempt any person or vessel from the requirements of subparts B (Atlantic mackerel, squid, and butterfish), D (sea scallop), E (surf clam and ocean quahog), F (NE multispecies), G (summer flounder), H (scup), I (black sea bass), or J (bluefish) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Administrator shall consult with the Executive Director of the Council regarding such exemptions for the Atlantic mackerel, squid, and butterfish, the summer flounder, the scup, the black sea bass, and the bluefish fisheries.

* * * * *

9. In § 648.14, paragraphs (w)(1) through (w)(5) are revised and paragraphs (w)(6), (w)(7), and (x)(8) are added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(w) * * *

(1) Possess in or harvest from the EEZ, Atlantic bluefish, in excess of the daily possession limit found at § 648.164, unless the vessel is issued a valid Atlantic bluefish vessel permit under § 648.4(a)(8) and the permit is on board the vessel and has not been surrendered, revoked, or suspended.

(2) Purchase, possess or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, in the capacity of a dealer, except for transport on land, Atlantic bluefish taken from a fishing vessel unless issued, and in possession of, a valid Atlantic bluefish fishery dealer permit issued under § 648.6(a).

(3) Sell, barter, trade or transfer, or attempt to sell, barter, trade or otherwise transfer, other than for transport, Atlantic bluefish, unless the dealer or transferee has a dealer permit issued under § 648.6(a).

(4) Land Atlantic bluefish for sale in a state after the effective date of the notification in the **Federal Register**, pursuant to § 648.161(b), which notifies permit holders that the commercial quota is no longer available in that state.

(5) Carry passengers for hire, or carry more than three crew members for a charter boat or five crew members for a party boat, while fishing commercially pursuant to an Atlantic bluefish permit issued under § 648.4(a)(8).

(6) Land Atlantic bluefish for sale after the effective date of the notification in the **Federal Register** pursuant to § 648.161(a), which notifies permit holders that the Atlantic bluefish fishery is closed.

(7) Sell or transfer bluefish harvested in or from the EEZ unless the vessel has been issued a valid commercial permit pursuant to § 648.4(a)(8)(i).

(x) * * *

(8) All bluefish possessed on board a party or charter vessel issued a permit under § 648.4(a)(8) are deemed to have been harvested from the EEZ.

10. Subpart J is revised to read as follows:

Subpart J—Management Measures for the Atlantic Bluefish Fishery

Sec.
648.160 Catch quotas and other restrictions.
648.161 Closures.
648.162 Minimum fish sizes.
648.163 Gear restrictions.
648.164 Possession restrictions.
648.165 Framework specifications.

Subpart J—Management Measures for the Atlantic Bluefish Fishery

§ 648.160 Catch quotas and other restrictions.

The fishing year is from January 1 through December 31.

(a) *Annual review.* The Bluefish Monitoring Committee will review the following data, subject to availability, on or before August 15 of each year to recommend the total allowable level of landings (TAL) and other restrictions necessary to achieve a target fishing mortality rate (F) of 0.51 in 1999 and 2000; a target F of 0.41 in 2001, 2002, and 2003; a target F of 0.31 in 2004, 2005, 2006, and 2007; and a target F of 0.36 thereafter: Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling data; impact of gear other than otter trawls and gill nets on the mortality of bluefish; and any other relevant information.

(b) *Recommended measures.* Based on the annual review, the Bluefish Monitoring Committee shall recommend to the Coastal Migratory Committee of the Council and the Commission the following measures to assure that the F specified in paragraph (a) of this section will not be exceeded:

(1) A TAL set from a range of zero to the maximum allowed to achieve the specified F.

(2) Commercial minimum fish size.

(3) Minimum mesh size.

(4) Recreational possession limit set from a range of zero to 20 bluefish to achieve the specified F.

(5) Recreational minimum fish size.

(6) Recreational season.

(7) Restrictions on gear other than otter trawls and gill nets.

(c) *Allocation of the TAL*—(1) *Recreational harvest limit.* The recreational fishery shall be allocated 83 percent of the TAL as a harvest limit.

(2) *Commercial quota.* The commercial fishery shall be allocated 17 percent of the TAL as a quota. If 17 percent of the TAL is less than 10.5 mil lb (4.8 mil kg), and the recreational fishery is not projected to land 83 percent of the TAL for the upcoming year, the commercial fishery may be allocated up to 10.5 mil lb (4.8 mil kg) as its quota, provided that the combination of the projected recreational landings and the commercial quota does not exceed the TAL.

(d) *Annual fishing measures.* The Council's Coastal Migratory Committee shall review the recommendations of the Bluefish Monitoring Committee. Based on these recommendations and any public comment, the Coastal Migratory Committee shall recommend to the Council measures necessary to assure that the applicable specified F will not be exceeded. The Council shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator by September 1 measures necessary to assure that the applicable specified F will not be exceeded. The Council's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the Commission. After such review, the Regional Administrator will publish a proposed rule in the **Federal Register** on or about October 15 to implement a coastwise commercial quota and recreational harvest limit and additional management measures for the commercial fishery, and will publish a proposed rule in the **Federal Register** on or about February 15 to implement additional management measures for the recreational fishery, if received from the Council by January 1, if he/she determines that such measures are necessary to assure that the applicable specified F will not be exceeded. After considering public comment, the Regional Administrator will publish a final rule in the **Federal Register**.

(e) *Distribution of annual quota.* (1) The annual commercial quota will be distributed to the states, based upon the following percentages:

ANNUAL COMMERCIAL QUOTA SHARES

State	Percentage
ME	0.6685
NH	0.4145
MA	6.7167
RI	6.8081
CT	1.2663
NY	10.3851
NJ	14.8162
DE	1.8782
MD	3.0018
VA	11.8795
NC	32.0608
SC	0.0352
GA	0.0095
FL	10.0597
Total	100.0000

Note: The ''Total'' does not actually add up to 100.0000 because of rounding error.

(2) All bluefish landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the bluefish were harvested. Any overages of the commercial quota landed in any state will be deducted from that state's annual quota for the following year.

(f) *Quota transfers and combinations.* Any state implementing a state commercial quota for bluefish may request approval from the Regional Administrator to transfer part or all of its annual quota to one or more other states. Two or more states implementing a state commercial quota for bluefish may request approval from the Regional Administrator to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for bluefish must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(1) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Administrator shall notify the appropriate state

officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether:

(i) The transfer or combination would preclude the overall annual quota from being fully harvested.

(ii) The transfer addresses an unforeseen variation or contingency in the fishery.

(iii) The transfer is consistent with the objectives of the FMP and Magnuson-Stevens Act.

(2) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made and will be effective when the notice of approval of the transfer or combination has been published in the **Federal Register**.

(3) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Administrator. A state may submit a new request when it receives notice that the Regional Administrator has disapproved the previous request or when notice of the approval of the transfer or combination has been published in the **Federal Register**.

(4) If there is a quota overage among states involved in the combination of quotas at the end of the fishing year, the overage will be deducted from the following year's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in paragraph (e)(1) of this section.

(g) Based upon any changes in the landings data available from the states for the base years 1981–89, the Commission and the Council may recommend to the Regional Administrator that the states' shares specified in paragraph (e)(1) of this section be revised. The Council's and the Commission's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendation. The Regional Administrator shall review the recommendation of the Commission and the Council. After such review, NMFS will publish a proposed rule in the **Federal Register** to implement a revision in the state shares. After considering public comment, NMFS will publish a final rule in the **Federal Register** to implement the changes in allocation.

§ 648.161 Closures.

(a) *EEZ closure.* The Regional Administrator shall close the EEZ to fishing for bluefish by commercial vessels for the remainder of the calendar year by publishing notification in the **Federal Register** if he/she determines that the inaction of one or more states will cause the applicable F specified in § 648.160(a) to be exceeded, or if the commercial fisheries in all states have been closed. The Regional Administrator may reopen the EEZ if earlier inaction by a state has been remedied by that state, or if commercial fisheries in one or more states have been reopened without causing the applicable specified F to be exceeded.

(b) *State quotas.* The Regional Administrator will monitor state commercial quotas based on dealer reports and other available information and shall determine the date when a state commercial quota will be harvested. The Regional Administrator shall publish notification in the **Federal Register** advising a state that, effective upon a specific date, its commercial quota has been harvested and notifying vessel and dealer permit holders that no commercial quota is available for landing bluefish in that state.

§ 648.162 Minimum fish sizes.

If the Council determines through its annual review or framework adjustment process that minimum fish sizes are necessary to assure that the fishing mortality rate is not exceeded, or to attain other FMP objective, such measures will be enacted through the procedure specified in § 648.160(d) or § 648.165.

§ 648.163 Gear restrictions.

If the Council determines through its annual review or framework adjustment process that gear restrictions are necessary to assure that the fishing mortality rate is not exceeded, or to attain other FMP objectives, such measures will be enacted through the procedure specified in § 648.160(d) or § 648.165.

§ 648.164 Possession restrictions.

(a) No person shall possess more than 10 bluefish in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a bluefish commercial permit or is issued a bluefish dealer permit. Persons aboard a vessel that is not issued a bluefish commercial permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a bluefish commercial permit are not subject to the possession limit when not carrying passengers for hire and when the crew size does not exceed five for a party boat and three for a charter boat.

(b) Bluefish harvested by vessels subject to the possession limit with more than one person on board may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of bluefish on board by the number of persons on board, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

§ 648.165 Framework specifications.

(a) *Within season management action.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Bluefish FMP.

(1) *Adjustment process.* After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analysis and the opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size, maximum fish size, gear restrictions, gear requirements or prohibitions, permitting restrictions, recreational possession limit, recreational season, closed areas, commercial season, description and identification of essential fish habitat (EFH), fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH, and any other management measures currently included in the FMP.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends

that the management measures should be issued as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(iii) Whether there is an immediate need to protect the resource; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *Action by NMFS.* If the Council's recommendation to NMFS includes adjustments or additions to management measures and:

(i) If NMFS concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, then the measures will be issued as a final rule in the **Federal Register**.

(ii) If NMFS concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, then the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Council's recommendation, then the measures will be issued as a final rule in the **Federal Register**.

(iii) If NMFS does not concur, then the Council will be notified in writing of the reasons for the non-concurrence.

(b) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

[FR Doc. 99–21591 Filed 8–20–99; 8:45 am]
BILLING CODE 3310–22–P

Notices

Federal Register

Vol. 64, No. 162

Monday, August 23, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Government Owned Inventions Available for Licensing

AGENCY: Agricultural Research Service, USDA.

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 Agriculture, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR 404 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to Janet I. Stockhausen of the USDA Forest Service, One Gifford Pinchot Drive, Madison, Wisconsin 53705–2398; telephone: 608–231–9502 or fax: 608–231–9508. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The inventions available for licensing are:

U.S. Patent Nos.

5,786,188, ''Fungal Inoculum Preparation''

5,834,301, ''Method of Removing Color From Kraft Wood Pulps''

5,852,909, ''Localized Notch Reinforcement for Wooden Beams''

5,853,982, ''Method of Isolating Strains of the *Lymantria dispar* Nuclear Polyhedrosis Virus''

5,921,388, ''Quick Deployment Fire Shelter''

Patent Application Serial No.

09/246,272, ''Apparatus and Method for the Measurement of Forest Duff Moisture Content''

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 99–21838 Filed 8–20–99; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Tobacco Production and Marketing Information

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of intent to release records and opportunity to opt out of the release.

SUMMARY: This notice announces the intention of the Secretary of Agriculture, pursuant to new legislation, to release certain tobacco production and marketing records to State organizations engaged in distributing certain private funds to tobacco producers and provides notice of the method in which interested parties can opt out of that release.

EFFECTIVE DATE: August 19, 1999.

ADDRESSES: Notices should be mailed to Charles Hatcher, Farm Service Agency (FSA), Tobacco and Peanuts Division, STOP 0514, 1400 Independence Avenue, SW, Washington, DC 20250–0514.

FOR FURTHER INFORMATION CONTACT: Misty L. Jones, telephone (202) 720-0200.

SUPPLEMENTARY INFORMATION: Tobacco growers are required to file various records with the Department of Agriculture in connection with the operation of the marketing quota program for tobacco operated by USDA under the Agricultural Adjustment Act of 1938 (1938 Act). Those records are normally required to be kept confidential. Recently, however, some tobacco companies have created a $5.15 billion national trust which would distribute funds to persons interested in growing cigarette tobacco under rules that will be developed by State trusts created for that purpose. This $5.15 billion distribution is sometimes referred to as the ''Phase II'' settlement to distinguish it from the larger ''Phase I'' settlement in which tobacco companies have agreed to pay a large sum of money to State governments. Some of the Phase I money, in some States may also go to tobacco producers. The rules for the distribution of monies under both Phase I and Phase II will be up to State organizations and not the Federal Government.

In order to efficiently make the monies available to interested parties, some States have sought production data collected by USDA under the 1938 Act. As a result, new legislation was recently enacted which would allow otherwise confidential information to be made available to the States.

Specifically, the new legislation (Pub. L. 106–47) provides that notwithstanding any other provision of law, the Secretary of Agriculture may, subject to certain conditions, release any and all marketing information submitted by persons relating to the production and marketing of tobacco. The information may only be released to State trusts or similar organizations engaged in the distribution of national trust funds to tobacco producers and other persons with interests associated with the production of tobacco. The law provides that the information may be released only to the extent that such release is in the interest of tobacco producers, as determined by the Secretary of Agriculture. The new legislation also provides that, in advance of making a release of information, the Secretary of Agriculture shall, to the maximum extent practicable, allow, by announcement, a period of at least 15 days for parties whose consent would otherwise be required by law to effectuate such release, to elect to be exempt from such release. In addition, the new law provides that a person who obtains information under such a release shall not use the records for any other purpose not authorized by the new law; a person who knowingly violates this condition on the release of the records is subject to a fine of up to $10,000 and imprisonment for up to 1 year, or both. Finally, the new law provides that the release allowed by the new law shall not apply to records submitted by cigarette manufacturers with respect to the production of cigarettes, or which were submitted as expected purchase intentions in connection with the establishment of national tobacco quotas, or which aggregate the purchase of particular buyers of tobacco.

Requests have already been made for producer records by State trusts which are preparing to make the multi-billion dollar ''Phase II'' distribution to farmers. Because these funds could provide much needed help to farmers, the Secretary intends to provide the records to the requesting organizations, consistent with the new law, except in the case of those parties who wish to opt out of the release. Those who do wish to opt out of the release should send notice in writing of that election to Charles Hatcher, FSA, Tobacco and Peanuts Division, STOP 0514, 1400 Independence Avenue, SW, Washington, DC 20250–0514. Such notice must be received by September 7, 1999.

As the release only affects farm records, warehouses and buyers of tobacco need not file any exemption elections. With respect to producers and other parties involved in the growing of tobacco, those producers should be advised that a request for an exemption from the disclosure could result in a delay in receiving a distribution from the State trust, or, depending on the eligibility criteria created by the State organizations, an ineligibility to share in the distribution. It is therefore not expected that there will be many exemption requests filed. Accordingly, it appears that the record collections can be made at one location for re-routing to the national record center for processing.

Signed at Washington, DC, on August 18, 1999.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 99–21870 Filed 8–19–99; 9:43 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Solicitation of Nominations for Members of the Grain Inspection Advisory Committee

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice to solicit nominees.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is announcing that nominations are being sought for persons to serve on GIPSA's Grain Inspection Advisory Committee.

SUPPLEMENTARY INFORMATION: Under authority of section 20 of the United States Grain Standards Act (Act), Pub. L. 97–35, the Secretary of Agriculture established the Grain Inspection Advisory Committee (Advisory Committee) on September 29, 1981, to provide advice to the Administrator on implementation of the Act. Section 14 of the United States Grain Standards Act Amendments of 1993, Pub. L. 103–156, extended the authority for the Advisory Committee through September 30, 2000.

The Advisory Committee presently consists of 15 members, appointed by the Secretary, who represent the interests of grain producers, processors, handlers, merchandisers, consumers, and exporters, including scientists with expertise in research related to the policies in section 2 of the Act. Members of the Committee serve without compensation. They are reimbursed for travel expenses, including per diem in lieu of subsistence, for travel away from their homes or regular places of business in performance of Advisory Committee service, as authorized under section 5703 of title 5, United States Code. Alternatively, travel expenses may be paid by Committee members.

Nominations are being sought for persons to serve on the Advisory Committee to replace the five members whose terms expire in March 2000. Nominations are also being sought for three alternate members to replace the alternates whose terms expire in March 2000 as well as to bring the total number of alternates back up to fifteen.

Persons interested in serving on the Advisory Committee, or in nominating individuals to serve, should contact GIPSA, by telephone (202–720–0219), fax (202–205–9237), or electronic mail (mplaus@gipsadc.usda.gov) and request Form AD–755, which must be completed and submitted to GIPSA by fax or at the following address: GIPSA, 1400 Independence Ave., SW, Stop 3601, Washington, DC 20250–3601. Form AD–755 must be received not later than October 22, 1999.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure that recommendations of the Committee take into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The final selection of Advisory Committee members and alternates will be made by the Secretary.

Dated: August 16, 1999.

James R. Baker,

Administrator.

[FR Doc. 99–21742 Filed 8–20–99; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Oklahoma

AGENCY: Natural Resources Conservation Service (NRCS) in Oklahoma, U.S. Department of Agriculture.

ACTION: Notice of availability of a proposed change in Section IV of the FOTG of the NRCS in Oklahoma for review and comment.

SUMMARY: It is the intention of NRCS in Oklahoma to issue revised conservation practice standards in Section IV of the FOTG. The revised standards are Contour Buffer Strips (Code 332), Cross Wind Trap Strips (Code 589C), Field Border (Code 386), Filter Strip (Code 393), Residue Management, Mulch Till (Code 329B), Residue Management, No Till and Strip Till (Code 329A), Pasture and Hayland Planting (Code 512), and Conservation Crop Rotation(Code 328). These practices may be used in conservation systems that treat highly erodible land.

DATES: Comments will be received until September 22, 1999.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Keith Vaughan, ASTC (Ecological Sciences), Natural Resources Conservation Service (NRCS), 100 USDA, Suite 206, Stillwater, OK 74074–2655. Copies of these standards will be made available upon written request. You may submit electronic requests and comments to Keith.Vaughan@ok.usda.gov. Telephone 405–742–1240.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Oklahoma will receive comments relative to the proposed change. Following that period, a determination will be made by the NRCS in Oklahoma regarding

disposition of those comments and a final determination of change will be made.

Dated: August 13, 1999.

Ronnie L. Clark,

State Conservationist, Stillwater, Oklahoma.

[FR Doc. 99–21848 Filed 8–20–99; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–098]

Anhydrous Sodium Metasilicate from France: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from a domestic interested party, the Department of Commerce is conducting an administrative review of the antidumping duty order on anhydrous sodium metasilicate from France for the period January 1, 1998, through December 31, 1998.

We have preliminarily determined a dumping margin in this review. If these preliminary results are adopted in the final results of this administrative review, we will instruct the Customs Service to assess antidumping duties on subject merchandise manufactured or exported by Rhone-Poulenc, S.A.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: August 23, 1999.

FOR FURTHER INFORMATION CONTACT: Stacey King or Mark Ross, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1757/4784.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR Part 351 (1998).

Background

On January 14, 1999, the Department published a notice of ''Opportunity to Request Administrative Review'' (64 FR 2470) with respect to the antidumping duty order on anhydrous sodium metasilicate (ASM) from France. The petitioner, PQ Corporation, requested a review of Rhone-Poulenc, S.A. on January 21, 1999. In response to PQ Corporation's request, the Department published a notice of initiation of an administrative review on February 22, 1999 (63 FR 20378), in accordance with 19 CFR 351.213(b).

Scope of Review

Imports covered by the review are shipments of ASM, a crystallized silicate which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. This merchandise is classified under HarmonizedTariff Schedules (HTS) item numbers 2839.11.00 and 2839.19.00. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Period of Review

The period of review is from January 1, 1998, through December 31, 1998.

Facts Available

Section 776(a)(2) of the Act provides that, if an interested party (1) withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (3) significantly impedes a determination under the antidumping statute, or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, then the Department shall, subject to section 782(d) of the Act, use facts otherwise available in determining dumping margins.

The Department sent Rhone-Poulenc a questionnaire on March 1, 1999, with a deadline of April 7, 1999, for providing information necessary to conduct a review of any shipments that the firm may have made to the United States during the period of review. Rhone-Poulenc did not respond to our original questionnaire or to a follow-up letter that we sent to the company. Because Rhone-Poulenc has withheld information we requested and has, in fact, made no effort to participate in this proceeding, we must, pursuant to sections 776(a)(2)(A) and (D) of the Act, use facts otherwise available to determine its dumping margins.

Based on the lack of any response from Rhone-Poulenc, we find that the company has failed to cooperate by not acting to the best of its ability to comply with a request for information. Therefore, pursuant to section 776(b) of the Act, the Department may use an inference that is adverse to the interests of Rhone-Poulenc in selecting from among the facts otherwise available. This section also provides that an adverse inference may include reliance on information derived from the petition, the final determination in the investigation segment of the proceeding, a previous review under section 751 of the Act or a determination under section 753 of the Act, or any other information placed on the record. In addition, the Statement of Administrative Action accompanying the URAA, H.R. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA), establishes that the Department may employ an adverse inference ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' SAA at 870. In employing adverse inferences, the Department is instructed to consider ''the extent to which a party may benefit from its own lack of cooperation.'' *Id.* Because we find that Rhone-Poulenc failed to cooperate by not complying with our request for information and in order to ensure that it does not benefit from its lack of cooperation, we are employing an adverse inference in selecting from the facts available.

The Department's practice when selecting an adverse rate from among the possible sources of information has been to ensure that the margin is sufficiently adverse ''as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' See *Static Random Access Memory Semiconductors From Taiwan; Final Determination of Sales at Less Than Fair Value,* 63 FR 8909, 8932 (February 23, 1998). The Department will also consider the extent to which a party may benefit from its own lack of cooperation in selecting a rate. See *Roller Chain Other Than Bicycle, From Japan; Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review,* 62 FR 69472, 69477 (November 10, 1997), and *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Administrative Review,* 62 FR 53808, 53820–21 (October 16, 1997).

In order to ensure that the rate is sufficiently adverse so as to induce Rhone-Poulenc's cooperation, we have assigned this company as adverse facts available a rate of 60.0 percent, the margin calculated in the original less-than-fair-value (LTFV) investigation using information provided by Rhone-Poulenc, S.A. (see *Anhydrous Sodium Metasilicate from France; Final Determination of Sales at Less Than Fair Value*, 45 FR 77498 (November 24, 1980)).

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information used for facts available by reviewing independent sources reasonably at its disposal. Information from a prior segment of the proceeding, such as that used here, constitutes secondary information. The SAA provides that to ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. SAA at 870. As explained in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used.

Unlike other types of information, such as input costs or selling expenses, there are no independent sources from which the Department can derive calculated dumping margins; the only source for margins is administrative determinations. In an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period.

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (see *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996), where the Department disregarded the highest dumping margin as adverse BIA because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). There is no evidence of circumstances indicating that the margin used as facts available in this review is not appropriate. Therefore, the requirements of section 776(c) of the Act are satisfied.

Preliminary Results of the Review

As a result of this review, the Department preliminarily determines that a margin of 60 percent exists for Rhone Poulenc for the period January 1, 1998, through December 31, 1998.

Interested parties may request a hearing not later than 30 days after publication of this notice. Interested parties may also submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue and a brief summary of the argument. Any hearing, if requested, will be held three days after the scheduled date for submission of rebuttal briefs.

The Department will publish the final results of this administrative review, including a discussion of its analysis of issues raised in any case or rebuttal brief or at a hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results in this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The rate will be assessed uniformly on all entries of Rhone-Poulenc merchandise made during the period of review. The Department will issue appraisement instructions for Rhone-Poulenc merchandise directly to the Customs Service.

Furthermore, the following deposit rates will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for Rhone-Poulenc, S.A., will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 60.0 percent, the ''all others'' rate established in the LTFV investigation (45 FR 77498, November 24, 1980). This deposit rate, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 9, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–21841 Filed 8–20–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Wisconsin-Madison; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 99–010. *Applicant:* University of Wisconsin-Madison, Madison, WI 53706. *Instrument:* Diagnostic Neutral Beam System. *Manufacturer:* Budker Institute of Nuclear Physics, Russia, CIS. *Intended Use:* See notice at 64 FR 31541, June 11, 1999.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) high neutral beam current (3 to 5A), (2) low beam divergence (0.8 degree) and (3) duration of 3 ms for fluctuation and confinement studies with plasma. These capabilities are pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–21842 Filed 8–20–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Southern California; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 99–015. *Applicant:* University of Southern California, Los Angeles, CA 90089–1340. *Instrument:* Automated Microscope Workstation, Series 200. *Manufacturer:* Singer Instruments, United Kingdom. *Intended Use:* See notice at 64 FR 35630, July 1, 1999.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides a stage-mounted micromanipulator and a manually driven detenting stage designed specifically for genetic experiments in yeast cells. The National Institutes of Health advises in its memorandum of July 14, 1999 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–21843 Filed 8–20–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Environmental Impact Statement (EIS) on the Proposed MFS Globenet, Inc. Monterey Bay Fiber Optic Cable Installation Project Within the Monterey Bay National Marine Sanctuary (MBNMS)

AGENCY: Marine Sanctuaries Division (MSD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of intent; request for comments.

SUMMARY: NOAA announces its intention to prepare an EIS in accordance with the National Environmental Policy Act of 1969 for the authorization of the proposed installation of a fiber optic cable through Monterey Bay, California within the MBNMS. The action to be evaluated by this EIS is the proposal to install a submarine fiber optic telecommunications cable from New Zealand to Hawaii to California, with a focus on that part of the ocean route within the boundaries of the MBNMS and the terrestrial route within Santa Cruz and Monterey counties.

The EIS will be prepared in cooperation with the County of Santa Cruz, which issued a Notice of Preparation on March 29, 1999, regarding its intent to prepare an Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act (CEQA). The EIS prepared under this notice will be combined with the EIR and a joint EIR/EIS will be published.

DATES: Written comments on the intent to prepare an EIS and the scope of the EIS will be accepted on or before September 22, 1999. A public scoping meeting to inform interested parties of the proposed action and to receive public comments on the scope of the EIS is scheduled as follows:

September 1, 1999, 7:00–9:00 p.m.

Moss Landing Chamber of Commerce, 8045 Moss Landing Road, Moss Landing, California

ADDRESSES: Written comments on the scope of the EIS, suggested alternatives and potential impacts should be sent to William Douros, Responsible Program Manager, Monterey Bay National Marine Sanctuary, 299 Foam Street, Monterey, California 93940. Comments may be submitted by FAX at (831) 647–4250. Comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: William Douros, Responsible Program Manager, Monterey Bay National Marine Sanctuary, 299 Foam Street, Monterey, California 93940.

SUPPLEMENTARY INFORMATION:

I. Proposed Action

The proposed action would involve the authorization of installation of approximately 58.5 miles of submarine cable within the boundaries of the Monterey Bay National Marine Sanctuary as part of a larger project for a cable that would link New Zealand to Hawaii and the continental United States. Sanctuary regulations at 15 CFR Part 922, Subpart M, require authorization by the Sanctuary for installation and continued operation of the proposed cable within the MBNMS. The applicant (MFS Globenet, Inc. and Worldcom Network Services, Inc.) anticipates the cable would operate for a minimum of 25 years. The scope of the EIS will address the offshore area from shore to the seaward boundary of the MBNMS.

The seaward component of the project includes the seaward portions of two directionally bored conduits (approximately 950 meters out to sea to a water depth of 15 meters) and one two-inch wide submarine cable extending westward from one of the conduits to deep ocean. The offshore cable would extend along the submarine ridge (''Smooth Ridge'') to the western boundary of the MBNMS (and then onward to New Zealand via Hawaii).

The applicant proposes to bury the cable to a depth of one meter out to a water depth of 2,000 meters, where feasible and where sensitive areas are not prohibitive. In general, the cable would be laid directly onto the ocean floor at ocean depths greater than 2,000 meters, where the potential for conflict with other marine uses is likely to be minimal.

Two cable burial methods are proposed. Where feasible, an underwater plow deployed from the cable ship would cut a narrow trench

for the cable and bury the cable. In sensitive areas or areas where the plow cannot operate safely, the cable would be laid directly on the sea floor and buried using a post lay jetting system in which a remotely operated vehicle with high-volume, low-pressure water jets would jet the cable into the sediment. This system would liquefy the substrate directly beneath the cable, causing the cable to sink into the substrate.

The applicant proposes to land the cable onshore in Santa Cruz County at the Monterey Bay Academy approximately two miles south of La Selva Beach. A cable landing facility would be located at the Monterey Bay Academy and the cable would continue onshore buried for 8.7 miles to a cable equipment building to be located within the unincorporated community of Pajaro. The cable would be connected to the existing network facilities at the cable termination station.

II. Alternatives

Pursuant to National Environmental Policy Act (NEPA) requirements, the EIR/EIS will evaluate the No Action Alternative and alternative routes for placement and landing of the fiber optic cable. Six preliminary alternatives to the proposed action have been developed based on initial discussions with state and local agencies, as well as the local commercial fishing industry.

Additional alternatives to the proposed action may be developed as part of the public scoping phase for inclusion in the Draft EIR/EIS. The possible alternatives include:

No Action Alternative—Under the No Action Alternative, MFS Globenet would not construct the proposed fiber optic cable.

Alternative 1 Route—This alternative route follows along the northern edge of Soquel and Cabrillo canyons to minimize potential conflicts with commercial fishing. A re-route of the transition between inner shelf and smooth ridge between 120–400 meter depth contours also minimizes impacts to hard-bottom benthic habitat. The route would traverse approximately 62.4 miles of the MBNMS. The onshore landing area would be the same as the proposed action.

Alternative 2 Route—The cable would be routed up the length of Monterey Canyon and through Soquel Canyon for a distance of 75.5 miles across the MBNMS. This alternative is intended to reduce potential impacts to commercial trawl fishing. The onshore landing area would be the same as the proposed action.

Alternative 3 Route—This alternative considers a combined landing at a beach proposed by another cable project proponent. Fiber optic cables would generally follow the proposed action route, but would land at La Selva Beach instead of Monterey Bay Academy.

Alternative 4 Route—The cable would generally follow the ridge of Año Nuevo Canyon and would traverse approximately 47.3 miles of the MBNMS. The landing site would be located at Davenport Beach, just south of El Jarro Point. This alternative reduces linear encroachment into MBNMS and reduces encroachment onto the continental shelf.

Alternative 5 Route—The offshore segment of the cable would be routed across a narrower section of the MBNMS (compared to the proposed action) and along the northern rim of Ascension Canyon to Davenport Beach, just south of El Jarro Point (same landing as Alternative 4). The route would traverse approximately 35.8 miles of the MBNMS. This alternative would reduce linear encroachment into the Sanctuary.

Alternative 6 Route—The cable would be constructed outside the boundaries of the MBNMS to avoid impacts to Sanctuary resources. The nearshore cable route and landing site would be consolidated with the applicant's other proposed cable landings in Morro Bay, California.

III. Summary of Environmental Issues

The installation, maintenance, and eventual decommissioning and removal of the cable pose potentially significant impacts upon Sanctuary resources and qualities. The EIR/EIS will address onshore and offshore environmental effects of cable construction, operation, maintenance and repair, and removal. Potential onshore impacts have been identified in the separate Notice of Preparation, issued by the County of Santa Cruz, as the EIR lead agency. Specific offshore environmental issues that have been identified for analysis in the EIR/EIS include:

- Effects on commercial and recreational fisheries and fisheries operations, including construction interference with fishing activities, potential loss of catch, and potential accidents (e.g., fishing net entanglement);
- Trenching effects (e.g., sediment plume, benthic disruption, and siltation) on the water column, marine water quality, and flora and fauna;
- Effects on kelp beds, benthic communities, rocky hard-bottom communities, plankton, fish, marine birds, marine mammals, and marine turtles from construction disturbances and/or release of contaminants, including boats anchoring, increased turbidity, sediment contamination, boat and construction-related noise, and introduction of exotic species from foreign vessels;
- Potential for bentonite spills and spill effects on water quality and aquatic habitats and species;
- Potential entanglements by cetaceans (whales) including sperm whales where the cable is exposed and gray whales that feed on the ocean bottom;
- ''Strumming'' (lateral movement of the cable along the seafloor due to ocean currents) impacts on the marine environment;
- Geologic hazards and physical effects on the cable (e.g., submarine landslides and erosion);
- Electromagnetic field effects on marine species;
- Impacts on submerged cultural resources;
- Direct or indirect effects on sensitive species and habitats;
- Cable installation vessel interference with commercial and recreational vessel navigation; and
- Short-term air quality effects from construction equipment, vehicle, and vessel emissions.

IV. Future Public Involvement

Additional opportunities for public review will be provided when the Draft EIR/EIS is completed. A notice of availability of the Draft EIR/EIS will be published in the **Federal Register.** In addition, release of the Draft EIR/EIS for public comment and public meetings on the Draft EIR/EIS will be announced in the local news media, as the dates are established. According to the current schedule, which is subject to change, the Draft EIR/EIS is expected to be released in December 1999.

V. Special Accommodations

The public scoping meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Scott Kathey at the Monterey Bay National Marine Sanctuary, (831) 647–4251, at least five days prior to the meeting date.

Authority: 16 U.S.C. Section 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: August 17, 1999.

Ted Lillestolen,

Deputy Assistant Administrator, Ocean Services and Coastal Zone Management.

[FR Doc. 99–21774 Filed 8–20–99; 8:45 am]

BILLING CODE 3510–D8–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

August 17, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing guaranteed access levels.

EFFECTIVE DATE: August 25, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

At the request of the Government of the Dominican Republic, the U.S. Government has agreed to increase the current guaranteed access levels for textile products in certain categories.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 63297, published on November 12, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 17, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 5, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on August 25, 1999, you are directed to increase the guaranteed access levels for the categories listed below for the period beginning on January 1, 1999 and extending through December 31, 1999.

Category	Guaranteed access level
338/638	7,150,000 dozen.
339/639	4,150,000 dozen.
347/348/647/648	9,050,000 dozen.
433	121,000 dozen.
633	120,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–21780 Filed 8–20–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

August 17, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: August 25, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for Categories 339/639 and 347/348/647/648 are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 63297, published on November 12, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 17, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 5, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on August 25, 1999, you are directed to increase the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
339/639	1,352,001 dozen.
347/348/647/648	2,672,369 dozen of which not more than 1,238,434 dozen shall be in Categories 647/648.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–21781 Filed 8–20–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

August 17, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 26, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, carryforward and special carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 68247, published on December 10, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 17, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 4, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on August 26, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
334/634	148,470 dozen.
338/339	4,479,198 dozen.
340/640	2,405,744 dozen.
342/642	1,286,807 dozen.
345	195,761 dozen.
347/348	752,408 dozen.
351/651	328,512 dozen.
641	1,616,361 dozen.
647/648	701,252 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99–21778 Filed 8–20–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in Korea

August 17, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: August 26, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for Categories 638/639 and 647/648 are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 56005, published on October 20, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 17, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 14, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Korea and exported during the period January 1, 1999 through December 31, 1999.

Effective on August 26, 1999, you are directed to reduce the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
638/639	5,286,041 dozen.
647/648	1,341,828 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–21779 Filed 8–20–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Mauritius

August 17, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 60306, published on November 9, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 17, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Mauritius and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on September 1, 1999, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/339	612,629 dozen.
347/348	1,158,004 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–21782 Filed 8–20–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Panel To Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the next meeting of the Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction. A portion of the meeting will be open to the public. Notice of this meeting is required under the Federal Advisory Committee Act. (Pub. L. 92–463).

DATES: September 22, 1999.

ADDRESSES: Room 806, RAND, Suite 800, 1333 H Street, NW, Washington, DC 20005.

Proposed Schedule and Agenda: Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction will meet in closed session from 9:30 a.m. until 4:45 p.m. and from 5 p.m. until 5:30 p.m. on September 22, 1999. The meeting will be open for public from 4:45 p.m. until 5 p.m. This meeting will include classified briefings on the threat of domestic WMD terrorist attacks and on response capabilities. Time will be allocated as noted above for public comments by individuals or organizations.

FOR FURTHER INFORMATION CONTACT: RAND provides information about this Panel on its web site at http://www.rand.org/organization/nsrd/terrpanel; it can also be reached at (202) 296–5000 extension 5282. Public comment presentations will be limited to two minutes each and must be provided in writing prior to the meeting. Mail written presentations and requests to register to attend the open public session to: Priscilla Schlegel, RAND, 1333 H Street, NW, Washington, DC 20005. Public seating for this meeting is limited, and is available on a first-come, first served basis.

Dated: August 17, 1999.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–21738 Filed 8–20–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Defense Intelligence Agency, Department of Defense.

ACTION: Notice.

SUMMARY: On July 19, 1999, the Defense Intelligence Agency published an announcement (64 FR 38657) for a closed meeting on July 29, 1999. This meeting was cancelled due to the unavailability of key participants.

ADDRESSES: The Defense Intelligence Agency, 3100 Clarendon Blvd., Arlington, VA 22201–5300.

FOR FURTHER INFORMATION CONTACT: Maj. Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328, (202) 231–4930.

Dated: August 17, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–21737 Filed 8–20–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Advisory Group on Electron Devices, Department of Defense.

ACTION: Notice.

SUMMARY: Working Group C (Electro-Optics) of the DOD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, September 16, 1999.

ADDRESSES: The meeting will be held at Palisades Institute for Research

Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: August 17, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–21732 Filed 8–20–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY Department Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, October 7, 1999.

ADDRESSES: The meeting will be held at the Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Timothy Doyle, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate the industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: August 17, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–21733 Filed 8–20–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting the DOD Advisory Group on Electron Devices

AGENCY: Advisory Group on Electron Devices, Department of Defense.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, September 23, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Eliot Cohen, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: August 17, 1999.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–21734 Filed 8–20–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Advisory Group on Electron Devices, Department of Defense.

ACTION: Notice.

SUMMARY: Working group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, September 22, 1999.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Cox, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency

(ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments proposed to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. 10(d) (1944)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: August 17, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–21735 Filed 8–20–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Special Presidential Panel on Military Operations on Vieques

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Notice.

SUMMARY: The Panel will meet in closed session on August 20, 1999. The Panel was chartered by the Secretary of Defense on June 25, 1999 to provide advise and recommendations to him regarding the need for the continuation of military operations on the island of Vieques, Puerto Rico and the extent to which alternative sites or methods are available that would fulfill national security requirements.

The Panel will meet in closed session on August 20, 1999 to review and discuss information received from various sources concerning the Navy's involvement in Vieques, some of which is classified or raises issues concerning classified national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. Appendix II, (1982)), it is anticipated that matters affecting national security, as covered by 5 U.S.C. 552b(c)(1) (1998), will be presented throughout the meeting, and that, accordingly, the meeting will be closed to the public. Because of the short timeframe of the panel's review, and the accelerated pace of the meeting schedule, this announcement must be made less than 15 days before the meeting will take place.

DATES: August 20, 1999, 8:30 a.m. to 5 p.m.

ADDRESSES: 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: Dr. Hector Nevarez, the Designated Federal Officer, 1401 Wilson Boulevard, Suite 400, Arlington, VA 22209, phone (703) 696–9456, fax (703) 696–9482, or via Email at *Hector.Nevarez@osd.pentagon.mil.*

Dated: August 17, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–21736 Filed 8–20–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army proposes to alter a record system of records in its inventory of system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration adds a category of records and three routine uses to the existing system of records.

DATES: The action will be effective without further notice on September 22, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC–PDR–P, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The complete inventory of the Department of the Army's record system notices for records systems 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 address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 3, 1999, to the House Committee on Government Reform, the Senate Committee on Government Affairs, 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 February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 17, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0190–47 DAMO

SYSTEM NAME:

Correctional Reporting System (CRS) *(February 22, 1993, 58 FR 10002).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Army Regional Correctional Facilities and U.S. Army Correctional Activity, Fort Riley, KS; U.S. Disciplinary Barracks, Fort Leavenworth, KS.

The Army Clemency Board Office, Assistant Secretary of the Army, Manpower and Reserve Affairs, Washington, DC 20310–0110 (for decisions on clemency recommendations, parole actions, and restoration to duty).''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to end of entry ''Names, addresses, and telephone numbers of victims/witnesses.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry ''Victim's Rights and Restitution Act of 1990 as implemented by DoD Directive 1030.1 and DoD Instruction 1030.2; and Army Regulation 190–47, The Army Corrections System.''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add three paragraphs to entry ''To state and local authorities for purposes of providing (1) notification that individuals, who have been convicted of a specified sex offense or an offense against a victim who is a minor, will be residing in the state upon release from military confinement and (2)

information about the individual for inclusion in a state operated sex offender registry.

To the Bureau of Prisons for purpose of providing notification that the military transferee has been convicted of a sexually violent offense or an offense against a victim who is a minor.

To victims and witnesses of crime for the purpose of notifying them of date of parole or clemency hearing and other release related activities.''

* * * * *

A0190—47 DAMO

SYSTEM NAME:

Correctional Reporting System (CRS).

SYSTEM LOCATION:

Army Regional Correctional Facilities and U.S. Army Correctional Activity, Fort Riley, KS; U.S. Disciplinary barracks, Fort Leavenworth, KS.

The Army Clemency Board Office, Assistant Secretary of the Army, Manpower and Reserve Affairs, Washington, DC 20310–0110 (for decisions on clemency recommendations, parole actions, and restoration to duty).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any military member confined at an Army confinement or correctional facility as a result of, or pending, trial by courts-martial.

CATEGORIES OR RECORDS IN THE SYSTEM:

Documents related to the administration of individual military prisoners; courts-martial orders, release/confinement orders, medical examiner's reports, requests and receipts for health and comfort supplies, reports and recommendations relating to disciplinary actions, clothing and equipment issue records; forms authorizing correspondence by prisoner, mail records; personal history records; individual prisoner utilization records; requests for interview; fingerprint cards, military police reports; prisoner identification records; parolee agreements; inspections; documents regarding custodianship of personal funds and property of prisoners; former commanding officer's report; parents' report; spouse's report' classification recommendations; request to transfer prisoner; social history; clemency actions; psychologist's report; psychiatric and sociologic reports; certificate of parole; certificate of release from parole; assignment progress reports; and similar relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 951, NOTE; Victim's Rights and Restitution Act of 1990 as implemented by DoD Directive 1030.1 and DoD Instruction 1030.2; and Army Regulation 190–47, The Army Corrections System; and E.O. 9397 (SSN).

PURPOSE(S):

Correctional treatment records are used to determine prisoner's custody classifications, work assignments, educational needs, adjustment to confinement, areas of particular concern, and, as the basis for clemency, parole and restoration to duty considerations.

Automated records provide pertinent information required for proper management of confinement facility population, demographic studies, status of discipline and responsiveness of personnel procedures, as well as confinement utilization factors such as population turnover, recidivism, etc.

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:

Information may be disclosed to local, state, and federal law enforcement and investigation agencies for investigation and possible criminal prosecution, civil court actions or regulatory orders.

To confinement/correctional agencies for use in the administration of correctional programs including custody classification, employment, training and educational assignments, treatment programs, clemency, restoration to duty or parole actions, verification of offender's criminal records, employment records, and social histories.

To state and local authorities for purposes of providing (1) notification that individuals, who have been convicted of a specified sex offense or an offense against a victim who is a minor, will be residing in the state upon release from military confinement and (2) information about the individual for inclusion in a state operated sex offender registry.

To the Bureau of Prisons for purpose of providing notification that the military transferee has been convicted of a sexually violent offense or an offense against a victim who is a minor.

To victims and witnesses of crime for the purpose of notifying them of date of parole or clemency hearing and other release related activities.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STRONG, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and computerized data base.

RETRIEVABILITY:

By prisoner's surname and/or Social Security Number/register number.

SAFEGUARDS:

All records are maintained in areas accessible only to designated personnel having official need therefor. Automated data base and output are managed through comprehensive procedures and policies prescribed in system functional users manuals.

Regional Data Centers are contractor-operated. Contractor personnel are security screened; employees receive a security briefing and participate in an on-going security education program under the Regional Data Security Officer. Regional Data Centers are connected through a communications network to 44 distributed data processing centers at Army installations. Technical, physical, and administrative safeguards required by Army Regulation 380–19, Information Systems Security, are met at installation data processing centers and information is secured in locked rooms with limited/controlled access. Data are available only to installation personnel responsible for system operation and maintenance. Terminals not in data processing centers are under the supervision of a terminal area security officer at each remote location protecting them from unauthorized use. Access to information is controlled further by a system of assigned passwords for authorized users of terminals.

RETENTION AND DISPOSAL:

Individual correctional treatment records for prisoners in the U.S. Army Correctional Activity (USACA) or U.S. Disciplinary Barracks (USDB) are retained for 90 days following expiration of sentence/completion of parole/maximum release date, following which they are retired to the national Personnel Records Center for 25 years; destruction is by shredding. Similar records for prisoners in local Army confinement and correctional facilities are destroyed 4 years following release of prisoner from confinement.

Note: Transfer of a prisoner from one facility to another is not construed as released from confinement. When a prisoner is transferred to another facility, his/her file is transferred with him/her.

Information on tape/disc is erased after 3 years.

Army Clemency Board case files are returned on completion of Board action to USACA or USDB, as appropriate, where they are retained for 90 days after prisoner's release from confinement or return to duty, following which they are retired to the National Personnel Records Center and maintained for 25 years before being destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Operations and Plans, ATTN: DAMO–ODL, Headquarters, Department of the Army, Washington, DC 20310–0580.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the commander of the confinement/correctional facility, or to the Deputy Chief of Staff for Operations and Plans, ATTN: DAMO–ODL, Headquarters, Department of the Army, Washington, DC 20310–0440.

Individual should provide the full name, Social Security Number, present address, and dates of confinement and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the confinement/correctional facility where a prisoner, or to the Deputy Chief of Staff for Operations and Plans, ATTN: DAMO–ODL, Headquarters, Department of the Army, Washington, DC 20310–0440

Individual should provide the full name, Social Security Number, present address, and dates of confinement and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual witnesses; victims; Military Police/U.S. Army Criminal Investigation Command personnel and/or reports; informants; various Federal, state and local investigative and law enforcement agencies; foreign governments; and other individual or organization that may supply pertinent information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 99–21740 Filed 8–20–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF ENERGY

Richland Operations Office; Competitive Financial Assistance Solicitation

AGENCY: Richland Operations Office, U.S. Department of Energy.

ACTION: Notice of competitive financial assistance solicitation.

SUMMARY: The U.S. Department of Energy, Richland Operations Office, announces that it intends to issue a solicitation for a competitive financial assistance award. The proposed award will be for a cooperative agreement instrument, for a minimum three (3) year project period. The initial budget for FY 2000 is estimated at $50,000. The complete solicitation, including application address and due date, is available on the internet via the following address: *www.hanford.gov/procure/solicit.htm*.

FOR FURTHER INFORMATION CONTACT: Melanie P. Fletcher, U. S. Department of Energy, Richland Operations Office, FAX: (509) 376–5378, E:MAIL: melanie__p__fletcher@rl.gov

SUPPLEMENTARY INFORMATION: Solicitation Number: DE–RP06–99RL13996.

Scope of Project: The recipient of the proposed financial assistance instrument will provide the administrative resources to work cooperatively with the U.S. Department of Energy, Richland Operations Office in the placement of students, graduates and faculty members in promoting the following objectives:

(1) professional development and advanced training opportunities for students, graduates, and faculty members; and development (R&D mission in the U.S.).

(2) enhancement of academic/laboratory interface by promoting and facilitating R&D and technology transfer collaborations and other interactive endeavors;

(3) encouraging students to pursue educational and training experiences in science, mathematics, and engineering disciplines and to ultimately select careers in, or in support of areas vital to long-range research and development (R&D mission in the United States).

Sally A. Sieracki,

Acting Division Director, Procurement Services Division, Richland Operations Office.

[FR Doc. 99–21804 Filed 8–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB). Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Saturday, September 11, 1999, 8:30 a.m.–12:00 p.m. (Public Comment session 11:30 a.m.–11:45 a.m.)

ADDRESSES: Fernald Environmental Management Project, Large Laboratory Conference Room, 7400 Willey Road, Hamilton, OH 45219.

FOR FURTHER INFORMATION CONTACT: Gewn Doddy, Phoenix Environmental, MS 76, P.O. Box 538704, Cincinnati, Ohio 42553–8704, at (513) 648–6478.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Saturday, September 11, 1999:

8:30 a.m.—Call to order
8:30–8:45 a.m.—Chairs Remarks and Announcements
8:45–9:45 a.m.—Rebid of Fernald Contract
9:45–10:00 a.m.—Update on SSAB Transportation Workshop
10:00–10:15 a.m.—Break
10:15–10:30 a.m.—Silos
10:30–11:15 a.m.—Stewardship Seminar
11:15–11:30 a.m.—DOE Response to Cattle Grazing
11:30–11:45 a.m.—Public Comment
11:45–12:00 a.m.—Wrap Up
12:00 p.m. Adjourn

A final agenda will be available at the meeting, Saturday, September 11, 1999.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, 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 five 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, 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Jim Bierer, Chair, Fernald Citizens' Advisory Board, C/O Phoenix Environmental Corporation, MS 76, Post Office Box 538704, Cincinnati, Ohio 45253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC, on August 18, 1999.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–21805 Filed 8–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, September 2, 1999, 6:30 p.m.–9:30 p.m.

ADDRESSES: College Hill Library, (Front Range Community College), 3705 West 112th Avenue, Westminster, CO 80021.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855; fax (303) 420–7579.

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:

1. Update on projects and issues being tracked by the Colorado Department of Public Health and Environment.
2. Review and approve recommendation on Industrial Area Characterization Strategy.
3. Discuss and prepare the Board's draft year 2000 Work Plan.
4. Final approval of Board's Vision document.
5. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

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 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 a.m. to 4:00 p.m. Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC, on August 18, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–21806 Filed 8–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, September 1, 1999: 6:00 p.m.–9:00 p.m.

ADDRESSES: DOE Nevada Operations Office, 232 Energy Way, North Las Vegas, NV 89030.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Briefing on Yucca Mountain Draft Environmental Impact Statement
2. Nevada Test Site Stewardship Issues
3. Public Comment

Copies of the final agenda will be available at the meeting.

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 Kevin Rohrer, at the 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 Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved. This

notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

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 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on August 18, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–21807 Filed 8–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Sandia

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Kirtland Area Office (Sandia).

DATES: Wednesday, September 15, 1999: 5:30 p.m.–9:00 p.m. (MST).

ADDRESSES: Barelas Community Center, 714 7th Street, SW, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS–0184, Albuquerque, NM 87185, (505) 845–4094.

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:

5:30–6:30 p.m.—DOE Update
6:30–6:40 p.m.—Break
6:40–7:00 p.m.—Check In/ Minutes/ Agenda approval
7:00–7:10 p.m.—Honor Outgoing Executive Committee Members
7:10–7:30 p.m.—Scott's Corrective Action Management Unit Modification Recommendation
7:30–7:45 p.m.—Public Comment
7:45–8:00 p.m.—Break
8:00–8:15 p.m.—Budget
8:15–8:45 p.m.—Membership
8:45–8:50 p.m.—Work Plan
8:50–9:00 p.m.—Adjourn.

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 Mike Zamorski'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 Deputy Designated Federal Officer 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 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS–0184, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on August 18, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–21808 Filed 8–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Great Lakes Gas Transmission Limited Partnership; Notice of Request Under Blanket Authorization

August 17, 1999.

Take notice that on August 13, 1999, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, Suite 1600, Detroit, Michigan 48226, filed in Docket No. CP99–601–000 a request pursuant to Sections 157.205, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon and transfer by sale to SEMCO Energy Gas Company (SEMCO), certain delivery point facilities located in China Township, St. Clair County, Michigan (the China Township facilities), under the blanket certificate issued in Docket No. CP90–2053–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

On January 19, 1999, Great Lakes filed an application before the Commission in Docket No. CP99–162–000, pursuant to the Commission's blanket certificate prior notice procedures, to construct and operate a tap, a meter station, approximately 1.6 miles of 16-inch pipe (to connect the tap and meter station), and appurtenant facilities to establish a delivery point (the China Township Delivery point) for service to The Detroit Edison Company (Detroit Edison), a new end-use shipper on its system, in St. Clair County, Michigan. The China Township facilities were constructed to serve Detroit Edison's electric generating facilities. Public notice of Great Lakes' application was made on January 28, 1999. No protests to Great Lakes' application were filed in Docket No. CP99–162–000. Great Lakes received authorization to proceed with the project to serve Detroit Edison on March 16, 1999.

The China Township facilities were placed into service on May 16, 1999. Subsequent to receipt of the authorization to commence the construction of facilities to serve Detroit Edison, Great Lakes agreed to sell the facilities to SEMCO. Detroit Edison, which is the only end-user served by the subject facilities, has consented to Great Lakes' abandonment and sale of the China Township facilities. According to Great Lakes, SEMCO will transport natural gas supplies to Detroit Edison under a special transportation service agreement to be approved by the Michigan Public Service Commission (MSPC). Additionally, Great Lakes states that the abandonment and transfer by sale will become effective no later than the first day of the second month following receipt of authorizations of the Commission and Michigan Public Service Commission. Therefore, Great Lakes contends that the proposed abandonment and sale of the facilities would not result in any disruption or abandonment of service to Detroit Edison, nor will it disadvantage any of Great Lakes' existing customers. Additionally, Great Lakes asserts that upon acquisition, the facilities will not be operated as jurisdictional interstate transmission facilities, but will become part of SEMCO's intrastate distribution system, which is regulated by MSPC.

Great Lakes states that is presently completing, or, will complete prior to its abandonment and final sale of the China Township facilities, restoration steps in accordance with the FERC Plan and Procedures required at the China Township facilities location. Great Lakes alleges that it will retain ownership of the tap assembly, and certain computer and related equipment, including the temperature and pressure transmitters located at the meter station.

Any questions regarding this application should be directed to Marc M. Mozham, Vice President, Market Services and Development for Great Lakes, One Woodward Avenue, Suite 1600, Detroit, Michigan 48226 at (313) 596–4582, or Ms. M. Catharine Davis, Senior Attorney for Great Lakes, One Woodward Avenue, Suite 1600, Detroit, Michigan 48226 at (313) 596–4593.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21759 Filed 8–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–297–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

August 17, 1999.

Take notice that on August 13, 1999, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, tendered for the following revised tariff sheets for inclusion in Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1:

Sixth Revised Sheet No. 301
Sixth Revised Sheet No. 319
Sixth Revised Sheet No. 319A
First Revised Sheet No. 320
First Revised Sheet No. 368
First Revised Sheet No. 369
Fourth Revised Sheet No. 406
Third Revised Sheet No. 406A

Tennessee requests that the attached tariff sheets be made effective September 12, 1999.

Tennessee states that the attached tariff sheets are submitted in compliance with the Commission's Letter Order in the above-referenced docket. Tennessee Gas Pipeline Company, 88 FERC ¶ 61,073 (1999). Tennessee further states that the revised tariff sheets eliminate the Account No. 191 cost recovery tariff provisions from Tennessee's tariff in light of the Letter Order's acceptance of Tennessee's final Account No. 191 Reconciliation Report which reflected the final reconciliation and termination of Tennessee's Account No. 191.)

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21760 Filed 8–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. AC99–33–00 and EL99–33–002]

Tucson Electric Power Company; Notice of Filing

August 17, 1999.

Take notice that on July 30, 1999, Tucson Electric Power Company filed a Refund Report in compliance with the order issued by the Federal Energy Regulatory Commission (Commission) on June 1, 1999 in the above-referenced dockets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 31, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21758 Filed 8–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–451–001]

Williams Gas Pipelines Central, Inc.; Notice of Revised Refund Report

August 17, 1999.

Take notice that on August 12, 1999, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing a revised interruptible excess refund report for the month of October 1993.

Williams states that it filed its interruptible excess refund report on July 29, 1999. Williams has noted that Schedule 3 included with the July 29 filing contained errors in the calculation of interest during certain quarters. Accordingly, Williams has filed a revised Schedule 3 showing the corrected interest calculation and a revised Schedule 2 showing the allocation by customer of the revised refund amount.

Williams states that a copy of its filing was served on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests

will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21761 Filed 8–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2916–036]

East Bay Municipal Utility District; Notice of Availability of Final Environmental Assessment

August 17, 1999.

A final environmental assessment (FEA) is available for public review. The FEA is for an application for the Lower Mokelumne River Project (FERC No. 2916) to amend the license to remove Mine Run Dam. the Mine Run Dam was previously used to control acid mine drainage from the abandoned Penn Mine; no hydroelectric facilities are associated with Mine Run Dam. The project is located on the Mokelumne River, in Amador, Calaveras, and San Joaquin Counties, California. The FEA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment.

The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FEA are available for review in the Commission's Public Reference Branch, Room 2A, 888 First Street, NE., Washington, DC 20426 or by calling (202) 208–1371. The FEA may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm*. Please call (202) 208–2222 for assistance. For further information, please contact John K. Novak at (202) 219–2828.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21762 Filed 8–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments

August 17, 1999.

Take notice the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor License.

b. *Project No.:* P–11730–000.

c. *Dated Filed:* April 21, 1999.

d. *Applicant:* Black River Limited Partnership.

e. *Name of Project:* Alverno Hydroelectric Project.

f. *Location:* On the Black River in the Townships of Aloha, Benton, and Grant, in Cheboygan County, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Frank O. Christie, President, Franklyn Hydro, Inc., 8 East Main Street, Malone, New York 12953, (518) 483–1961.

i. *FERC Contact:* Any questions on this notice should be addressed to John Costello, E-mail address john.costello@ferc.fed.us or telephone at (202) 219–2914.

j. *Deadline for filing scoping comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official serve list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on the resource agency.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time.

l. *Description of Project:* The constructed project consists of a 360-foot-long earth filled dam with a power plant located on the right riverbank and a gated spillway near the left bank. The project impoundment extends approximately 2.5 miles upstream. The powerhouse contains 2 horizontal turbine/generator sets.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files and Maintenance Branch, located at 888 First Street, NE, Room 2A–1, Washington, DC 20426, or by calling (202) 208–2326. A copy is also available for inspection and reproduction at the Cheboygan Public Library, 107 South Ball Street, Cheboygan, Michigan.

n. *Scoping Process:* The Commission intends to prepare an Environmental Assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

The Commission will hold scoping meetings, one in the daytime and one in the evening, to help us identify the scope of issues to be addressed in the EA.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Daytime Meeting

Tuesday, September 21, 1999, 1:00 PM, Benton Town Hall, corner of North Black River Road, and Orchard Beach Road, (Alverno Corner)

Evening Meeting

Tuesday, September 21, 1999, 7:00 PM, Benton Town Hall, corner of North Black River Road, and Orchard Beach Road, (Alverno Corner)

To help focus discussions, we will distribute a Scoping Document (SD1) outlining the subject areas to be addressed in the EA to the parties on the Commission's mailing list. Copies of the SD1 also will be available at the scoping meetings.

Site Visit

The applicant and Commission staff will conduct a project site visit on Tuesday, September 21, 1999. We will meet at the project's powerhouse at 10:30 AM. If you would like to attend, please call Frank Christie, Black River Limited Partnership, at (518) 483–1961, no later than September 17, 1999.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21763 Filed 8–20–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00278; FRL–6099–4]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) will be held September 14–16, 1999, in Washington, DC. At this meeting, the NAC/AEGL Committee will address, as time permits, the various aspects of the acute toxicity, and the development of Acute Exposure Guideline Levels (AEGLs) for, the following chemicals: Bromine, furan, hydrogen sulfide, Otto Fuel (propylene glycol dinitrate major component), and 1,1,1-trichloroethane. There will also be a discussion of the review and comment by the National Academy of Sciences/National Research Council Subcommittee on AEGLs regarding certain Interim AEGL values previously published in the October 30, 1997, **Federal Register** notice (62 FR 58839–58851) (FRL–5737–3). These chemicals include 1,2-dichloroethylene, ethylene oxide, and phosphine.

DATES: Meetings of the NAC/AEGL Committee will be held from 10 a.m. to 5 p.m. on September 14, 1999; from 8:30 a.m. to 5 p.m. on September 15, 1999; and from 8:30 a.m. to 1 p.m. on September 16, 1999.

ADDRESSES: The meeting will be held at the Green Room on the third floor of the Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Christine M. Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: (202) 554–1404 and TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Paul S. Tobin, Designated Federal Officer (DFO), Office of Prevention, Pesticides and Toxic Substances (7406), 401 M St., SW., Washington, DC 20460; telephone number: (202) 260–1736; e-mail address: tobin.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

B. How Can I Get Additional Information, Including Copies of This Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–00278. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

II. Meeting Procedures

For additional information on the scheduled meeting, the agenda of the NAC/AEGL Committee, or the submission of information on chemicals to be discussed at the meeting, contact the DFO listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

The meeting of the NAC/AEGL Committee will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact the DFO to schedule presentations before the NAC/AEGL Committee. Since seating for outside observers may be limited, those wishing to attend the meeting as observers are also encouraged to contact the DFO at the earliest possible date to ensure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemical-specific information should be directed to the DFO.

III. Future Meetings

Another meeting of the NAC/AEGL Committee is scheduled for December 6–8, 1999. The location of this meeting

and chemicals to be discussed will be published in a future **Federal Register** notice.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Health.

Dated: August 17, 1999.

Joseph S. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 99–21834 Filed 8–20–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6426–3]

National Advisory Committee to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of a meeting of the National Advisory Committee (NAC) to the U.S. Government Representative to the Commission for Environmental Cooperation (CEC).

The Committee is established within the U.S. Environmental Protection Agency (EPA) to advise the Administrator of the EPA in her capacity as the U.S. Representative to the CEC. The Committee is authorized under Article 17 of the North American Agreement on Environmental Cooperation, and the North American Free Trade Agreement Implementation Act (NAFTA), Pub. L. 103–182. Federal government responsibilities relating to the committee are set forth in Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on Environmental Cooperation.'' The Committee is responsible for providing advice to the U.S. Representative on implementation and further elaboration of the agreement.

The Committee consists of 12 independent representatives drawn from among environmental groups, business and industry, public policy organizations and educational institutions.

DATES: The Committee will meet on Wednesday, September 8, 1999 from 8:30 a.m. until 5:30 p.m.

ADDRESSES: The Sheraton Seattle Hotel & Towers, 1400 Sixth Avenue, Seattle, Washington. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Joyce, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, at (202) 260–6889.

Dated: August 8, 1999.

Mark Joyce,

Designated Federal Officer, National Advisory Committee.

[FR Doc. 99–21827 Filed 8–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6426–2]

Governmental Advisory Committee to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of a meeting of the Governmental Advisory Committee (NAC) to the U.S. Government Representative to the Commission for Environmental Cooperation (CEC).

The Committee is established within the U.S. Environmental Protection Agency (EPA) to advise the Administrator of the EPA in her capacity as the U.S. Representative to the CEC. The Committee is authorized under Article 18 of the North American Agreement on Environmental Cooperation, and the North American Free Trade Agreement Implementation Act (NAFTA), Public Law 103–182. Federal government responsibilities relating to the committee are set forth in Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on Environmental Cooperation.'' The Committee is responsible for providing advice to the U.S. Representative on implementation and further elaboration of the agreement.

The Committee consists of 12 independent representatives drawn from state, local and tribal governments.

DATES: The Committee will meet on Wednesday, September 8, 1999 from 8:30 a.m. until 5:30 p.m.

ADDRESSES: The Sheraton Seattle Hotel & Towers, 1400 Sixth Avenue, Seattle, Washington. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Joyce, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, at (202) 260–6889.

Dated: August 8, 1999.

Mark Joyce,

Designated Federal Officer, Governmental Advisory Committee.

[FR Doc. 99–21828 Filed 8–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6426–7]

Proposed CERCLA Administrative Cost Recovery Settlement; Milan Krstich

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Superior Polishing site in Warren, Macomb County, Michigan with the following settling party: Milan Krstich. The settlement requires the settling party to pay $60,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling party pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 77 W. Jackson Boulevard, Chicago, Illinois 60604.

DATES: Comments must be submitted on or before September 22, 1999.

ADDRESSES: The proposed settlement is available for public inspection at 77 W. Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed

settlement may be obtained from Alan Walts, Assistant Regional Counsel, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604, phone (312) 353–8894. Comments should reference the Superior Polishing Site, Warren, Macomb County, Michigan and EPA Docket No. V–W–C–559 and should be addressed to Alan Walts, Assistant Regional Counsel, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604, phone (312) 353–8894.

FOR FURTHER INFORMATION CONTACT: Alan Walts, Assistant Regional Counsel, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604, phone (312) 353–8894.

Dated: August 4, 1999.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 99–21829 Filed 8–20–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

August 13, 1999.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0855.

Expiration Date: 01/31/2000.

Title: Telecommunications Reporting Worksheet and Associated Requirements—CC Docket No. 98–171.

Form No.: FCC Forms 499–A and 499–S.

Respondents: Business or other for-profit.

Estimated Annual Burden: 5500 respondents; 7.27 hours per response (avg.); 40,000 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $9,000,000.

Frequency of Response: Annually; Semi-annually; On occasion; Third Party Disclosure; Recordkeeping.

Description: In a Report and Order issued in CC Docket No. 98–171, released July 14, 1999, the Commission simplified and consolidated four Commission reporting requirements so that carriers need only file one worksheet to satisfy the contributor reporting requirements associated with: the universal service support mechanisms; telecommunications relay services; cost recovery mechanism for numbering administration; and cost recovery mechanism for shared costs of long-term number portability. Reporting Requirement: All contributors to the Federal telecommunications relay service, numbering administration, long-term portability, and universal service support mechanisms (except certain non-common carrier telecommunications service providers meeting the universal service de minimis exemption) must file the April version of the Telecommunications Reporting Worksheet, FCC Form 499–A on April 1 of each year. (No. of respondents: 3500; hours per response: 8 hours; total annual burden: 28,000 hours). All contributors to the universal service support mechanisms, except those that fall within the Commission's de minimis exemption, must file a streamlined version of the Telecommunications Reporting Worksheet (FCC Form 499–S) on September 1 of each year. The first filing of the FCC Form 499–S is due September 1, 1999. (No. of respondents: 2000; hours per response: 5.5 hours; total annual burden: 11,000 hours). The forms (i.e., FCC Form 499–A and 499–S) and instructions may be downloaded from the Commission's Forms Web Page (www.fcc.gov/formpage.html). Copies also may be obtained by calling the fax-on-demand line at (202) 481–2830. The retrieval number for the FCC 499–A form is 004992; the retrieval number for the FCC 499–S form is 004991. Copies of the forms may also obtained from USAC at (973) 560–4400. Recordkeeping Requirements: Small common carriers and small pay telephone providers must complete the table contained in Figure 2 of FCC Form 499 to determine whether they meet the de minimis standard and need not file the form on September 1. Small shared tenant service providers and small private carriers should complete the table in Figure 2 to determine whether they meet the de minimis standard and need not file the worksheet on either September 1 or April 1. Telecommunications providers that do not file because they are de minimis should retain figure 2 and documentation of their contribution base revenues for 3 calendar years after the date each worksheet is due. Carriers that provide carriers' carrier services must have documented procedures to ensure that it reports as revenues from resellers only revenues from entities that reasonably would be expected to contribute to support universal service. These procedures include, but are not limited to, maintaining the following information on resellers: Legal name; address; name of a contact person; and phone number of the contact person. (No. of respondents: 2000; annual burden per respondent: .25 hours; total annual burden: 500 hours). Third Party Disclosure: If a reseller qualified for the de minimis exemption, it must notify its underlying carriers that it is not contributing directly to universal service. (Number of respondents: 2000; annual burden per respondent: .25 hours; total annual burden: 500 hours). The information will be used by the Commission and the administrators to calculate contributions to the universal service support mechanisms, the telecommunications relay services support mechanism, the cost recovery for numbering administration, and the cost recovery for the shared costs of long-term local number portability. Without this collection, the information requested in the Worksheet would not be otherwise available. The Commission could not determine contributions to the above-mentioned, Congressionally-mandated support and cost recovery mechanisms and, therefore, could not fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended. In addition, the information collection will be used by carriers to satisfy their obligation under section 413 of the Act of file information concerning their designated agent for service of process. Obligation to comply: Mandatory.

OMB Control No.: 3060–0894.

Expiration Date: 08/31/2002.

Title: Notification to High Cost Subscribers and Certification Letter Accounting for Receipt of Federal Support—CC Docket Nos. 96–45 and 96–262 (Proposals).

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 81 respondents; 15.2 hours per response (avg.); 1233 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Monthly; Annually.

Description: The Commission will adopt a framework to be used in estimating costs and computing federal support to enable reasonable comparability of rates for non-rural

carriers. In a Further Notice of Proposed Rulemaking (FNPRM) issued in CC Docket Nos. 96–45 and 96–262, released May 28, 1999, the Commission provided an additional opportunity for interested parties to comment on specific universal service support implementation issues now that they are able to work with the cost model. Although the Commission has the responsibility to ensure that support is sufficient to enable reasonable comparability of rates, the states possess jurisdiction over specific rate levels. In the FNPRM, the Commission tentatively concluded that making support available as part of the state rate-setting process would empower state regulators to achieve reasonable comparability of rates within their states. The Commission proposed that carriers should be required to notify high-cost subscribers that their lines have been identified as high-cost lines and that federal high-cost support is being provided to the carrier to assist in keeping rates affordable in those subscribers' area. In addition, the Joint Board recommended that the Commission require carriers to certify that they will apply federal high-cost support in accordance with the statute. The Joint Board also recommended that the Commission should not require states to provide any certification as a ''condition'' for carriers in the state to receive high cost support, but the Commission should instead permit states to certify that, in order to receive federal universal service support, a carrier must use such funds in a manner consistent with 47 USC Section 254. Because some states may lack either the authority or the desire to impose conditions on the use of high-cost support, the Commission tentatively concluded that such state oversight, while valuable and potentially sufficient, may not in every case ensure that section 254(e)'s goals are met. Therefore, the Commission proposed to condition the receipt of federal universal service high-cost support on any state action, including adjustments to local rate schedules reflecting federal support. The Commission believes that denying support to states that lack the regulatory authority to ensure that federal funds are used appropriately would penalize those states and would not be consistent with section 254's mandates. The Commission proposed that even states that lack this authority should be able to certify to the Commission that a carrier within the state had accounted for its receipt of federal support in its rates or otherwise used the support for the ''provision, maintenance, and upgrading of facilities and services for which the support is intended'' in accordance with section 254(e). Proposed Information Collections: a. Each non-rural company that receives high cost support should notify high-cost subscribers that their lines have been identified as high-cost lines and that federal high-cost support is being provided to the carrier to assist in keeping rates affordable in those subscribers' area. (Note: in the FNPRM, the Commission seeks comment on this issue therefore the frequency of responses may decrease if the notification only occurs annually instead of monthly). (No. of respondents: 30; hours per response: 36 hours; total annual burden: 1,080 hours). b. Each state commission must file a letter with the Commission certifying that a carrier within the state had accounted for its receipt of federal support in its rates or otherwise used the support for the ''provision, maintenance, and upgrading of facilities and services for which the support is intended'' in accordance with section 254(e). (No. of respondents: 51; hours per response: 3 hours; total annual burden: 153 hours). If adopted, the information will be used to show that federal high-cost support is being provided to the carrier to assist in keeping rates affordable in those subscribers' area. Further, the collection of information will be used to verify that the carriers have accounted for its receipt of federal support in its rates or otherwise used the support for the ''provision, maintenance, and upgrading of facilities and services for which the support is intended'' in accordance with section 254(e). Obligation to respond: Mandatory.

OMB Control No.: 3060-0895.

Expiration Date: 08/31/2002.

Title: Numbering Resource Optimization—CC Docket No. 99–200 (Proposed Rule).

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 3,000 respondents; 52 hours per response (avg.); 156,000 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Quarterly.

Description: In a Notice of Proposed Rulemaking (Notice) issued in CC Docket No. 99–200, released June 2, 1999, the Commission examined a variety of measures intended to increase the efficiency with which telecommunications carriers use telephone numbering resources in order to slow the rate of number exhaust in this country. The Notice sought public comment on how best to create national standards for numbering resource optimization. Specifically, the Notice examined the existing mechanisms for the administration and allocation of numbering resources, which are governed by industry-developed Central Office Code Guidelines. The guidelines have not been effective in constraining the ability of carriers to obtain and carry excessively large inventories of numbering resources for which they have no immediate need. The Notice sought comment on measures that would tie the allocation of new numbering resources to a showing of need by the carrier, increase carrier accountability for number utilization through enhanced data reporting and audit requirements, and speed the return of unused numbering resources. The Notice specifically sought comment on the possibility of requiring carriers to meet number utilization thresholds before they can obtain additional numbering resources. These measures would not require implementation of new systems or technologies, and could likely be implemented in a relatively short time period at minimal cost. The Notice proposed certain verification measures designed to prevent carriers from obtaining numbering resources that they do not need in the near term. Proposed Information Collections: a. Quarterly Reporting: The Commission proposes to collect utilization and forecast data information from all telecommunications carriers that use numbering resources. The Notice tentatively concludes that carriers should report utilization and forecast data on a quarterly basis and that the Commission should mandate that all users of numbering resources must supply utilization and forecast data to the NANPA. (No. of respondents: 3,000; hours per response 48 hours; total annual burden: 144,000 hours). b. Initial Codes: With respect to an applicant's ability to obtain initial codes, the Notice sought comment on what type of showing would be appropriate. The Notice sought comment on whether applicants should be required to make a particular showing regarding the equipment they intend to use to provide service, the state of readiness of their network or switches, or their progress with their business plans, prior to obtaining initial codes, or whether any other type of showing should be required. The Notice sought comment on whether applicants should be required to submit evidence of their license/certificate with their

applications for initial codes, or conversely, whether the NANPA should be required to check the status of an applicant's license or certification with the relevant state commission prior to issuing the requested initial code. (No. of respondents: 3,000; hours per response: 1 hour; total annual burden: 3,000 hours). c. Growth Codes: Applicants for NXX codes currently are required to complete a Months-to-Exhaust Worksheet prior to applying for growth codes. The Notice sought comment on whether requiring applicants to submit the Months-to-Exhaust Worksheet with an application for growth codes would be an adequate demonstration of need for additional numbering resources. Alternatively, the Notice sought comment on whether carriers should be required to demonstrate that they have achieved a specified level of numbering utilization (or fill rate) in the area in question before they may receive additional numbering resources. (No. of respondents: 3,000; hours per response: 3 hours; total annual burden: 9,000 hours). If adopted, all of the proposed collections will be used to prevent the premature exhaustion of numbering resources. Obligation to comply: Mandatory.

OMB Control No.: 3060–0793.

Expiration Date: 08/31/2002.

Title: Procedures for States Regarding Lifeline Consents, Adoption of Intrastate Discount Matrix for Schools and Libraries, and Designation of Eligible Telecommunications Carriers.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 260 respondents; .58 hours per response (avg.); 155 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; annually.

Description: In a Further Notice of Proposed Rulemaking (FNPRM) issued in CC Docket Nos. 96–45 and 97–60, released May 28, 1999, the Commission proposed to change the way in which local exchange carriers file rural certification letters. The Commission proposed that carriers who serve under 100,000 access lines should not have to file the annual rural certification letter unless their status has changed since their last filing. In addition, the Commission proposes that once it has clarified the meaning of ''local exchange operating entity'' and ''communities of more than 50,000'' in section 153(37), it should require carriers with more than 100,000 access lines that seek rural status to file certifications for the period beginning January 1, 2000, consistent with the Commission's interpretation of the ''rural telephone company'' definition. (No. of respondents: 5; hours per response: 1 hour; total annual burden: 5 hours). For carriers with more than 100,000 access lines, that seek rural status, the Commission sought comment on whether it should require these carriers to re-certify each year (after the filing of January 1, 2000) or, in the alternative, whether they should be required to re-certify only if their status has changed. (No. of respondents: 20; hours per response: 1 hour; total annual burden: 20 hours). Note that the FNPRM does not propose to modify several collections of information previously approved by OMB under this control number. Submission of eligibility criteria: States must designate common carriers as eligible telecommunications carriers for service areas designated by the state commission in accordance collection with 47 U.S.C. Section 214(e). (No. of respondents: 25; hours per response: 1; total annual burden: 25 hours). Notification of change in status as rural telephone company. If a local exchange carrier's status as a rural telephone company changes so that it becomes ineligible for certification as a rural carrier, that carrier must inform the Commission and the Administrator within one month of the change. (No. of respondents: 210; hours per response: .5 total annual burden: 105 hours.) If the proposed collections are adopted, the information will be used to determine which rural and non-rural LECs will receive universal service support. All the requirements are necessary to implement the congressional mandate for universal service. These reporting requirements are necessary to verify that particular carriers and other respondents are eligible to receive universal service support. Obligation to comply: Required to obtain or retain benefits.

OMB Control No.: 3060–0814.

Expiration Date: 09/30/2001.

Title: Section 54.301, Local Switching Support and Local Switching Support Data Collection Form and Instructions.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 192 respondents; 21.55 hours per response (avg.); 4138 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Annually.

Description: Pursuant to 47 CFR 54.301(a) through (e), each incumbent local exchange carrier that is not a member of the NECA common line tariff, that has been designated an eligible telecommunications carrier, and that serves a study area with 50,000 or fewer access lines shall, for each study area, provide the Administrator with the projected total unseparated dollar amount assigned to each account in section 54.301(b). (No. of respondents: 172; hours per response: 24; total annual burden: 4128 hours.) Pursuant to 47 CFR 54.301(f)–(e), each incumbent local exchange carrier that is not a member of the NECA common line tariff, that is an average schedule company, that has been designated an eligible telecommunications carrier, and that serves a study area with 50,000 or fewer access lines shall, for each study area, provide the Administrator with their total number of access lines, total number of central offices, and projected access minutes. This information is necessary so that the universal service administrator may comply with section 54.301(f) of the Commission's rules. Section 54.301(f) provides that, consistent with the Commission's treatment of average schedule companies, the universal service administrator should develop ''a formula that simulates the disbursements that would be received pursuant to this section by a company that is representative of average schedule companies.'' 47 CFR 54.301(f). (No. of respondents: 20; hours per response: .5 hours; total annual burden: 10 hours.) The universal service administrator, USAC, has developed a form to collect the information specified in the Commission's rules. This data request is necessary to calculate the average unseparated local switching revenue requirement. This revenue requirement calculation is necessary to calculate the amount of local switching support that carriers will receive. Obligation to Comply: Mandatory.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–21809 Filed 8–20–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 7, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Donald E. Kuehl, Watertown, Wisconsin; to acquire voting shares of Community Investment Bancorporation, Inc., Watertown, Wisconsin, and thereby indirectly acquire voting shares of Lebanon State Bank, Lebanon, Wisconsin.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Sherwood Partners, Ltd.; Monroe Partners, Ltd.; Dennis S. Hudson, Jr.; Anne P. Hudson; Dennis S. Hudson, III; Dana L. Houck; Ronald Houck, Jr.; Ronald Houck, III; Suzanne H. Benfield Franklin; Andrew B. Hudson; Dale M. Hudson; Mary T. Hudson; Dale M. Hudson, Jr.; Jane H. Eaker; and Stephanie H. Forsberg, all of Stuart, Florida; to retain voting shares of Seacoast Banking Corporation of Florida, Stuart, Florida, and thereby indirectly retain voting shares of First National Bank and Trust Company of the Treasure Coast, Stuart, Florida.

Board of Governors of the Federal Reserve System, August 17, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–21725 Filed 8–20–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 16, 1999.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. The Royal Bank of Scotland Group plc, and The Royal Bank of Scotland plc, both of Edinburgh, Scotland, and Citizens Financial Group, Inc., Providence, Rhode Island; to acquire 100 percent of the voting shares of UST Corp., USTrust and United States Trust Company, all of Boston, Massachusetts.

In connection with this application Applicants have also applied to acquire Cambridge Trade Finance Corporation, Boston, Massachusetts, and thereby engage in short term financing of international transactions involving import and export of goods, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, August 17, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–21726 Filed 8–20–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

A De Novo Corporation To Do Business Under Section 25A of the Federal Reserve Act; Correction

This notice corrects a notice (FR Doc. 99-21328) published on page 44735 of the issue for Tuesday, August 17, 1999.

Under the Federal Reserve Bank of New York heading, the entry for CLS Services, Ltd., London, England, is revised to read as follows:

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25A of the Federal Reserve Act (Edge Corporation) 12 U.S.C. § 611 *et seq*. The factors that are to be considered in acting on the application are set forth in the Board's Regulation K (12 CFR 211.4).

The application may by inspected at the Federal Reserve Bank of New York or at the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing.

Comments regarding the application must be received by the Reserve Bank indicated or at the offices of the Board of Governors not later than September 16, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. CLS Services, Ltd., London, England; to establish CLS Bank International, New York, New York, as an Edge Corporation, pursuant to § 25A of the Federal Reserve Act, and a wholly owned subsidiary of CLS Services Ltd., London, England, which will offer a continuous linked settlement service intended to reduce settlement risk associated with foreign exchange trading, pursuant to § 25A of the Federal Reserve Act.

Board of Governors of the Federal Reserve System, August 17, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–21724 Filed 8–20–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

[Authority: Section 18, Pub. L. 106–37; Docket No. 1039]

Designation of Board's Liaison Under the Y2K Act

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has appointed Howard Amer, Assistant Director, Division of Banking Supervision and Regulation, to act as the Board's liaison for purposes of section 18 of the Y2K Act, Pub. L. 106–37. Mr. Amer has directed the efforts of the Board's Division of Banking Supervision and Regulation with regard to the Y2K readiness of Federal Reserve supervised financial institutions. Mr. Amer will act as the liaison between the Board and small business concerns regulated or supervised by the Board with respect to problems arising out of Y2K failures and compliance with Federal rules or regulations. A small business concern as defined by section 18 (a)(3) of the Y2K Act means an unincorporated business, a partnership, corporation, association, or organization, with fewer than 50 full-time employees.

DATES: Mr. Amer's appointment is effective August 19, 1999.

ADDRESSES: Mr. Amer's address is: 1. Howard Amer, Assistant Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th and C Street NW, Washington DC 20551.

2. Mr. Amer's phone number is 202–452–2958.

FOR FURTHER INFORMATION CONTACT: Alicia S. Foster, Senior Attorney (202–452–5289) or Richard M. Ashton, Associate General Counsel (202–452–3750). For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202–452–3544), Board of Governors of the Federal Reserve System, 20th and C Street NW, Washington, DC 20551.

Board of Governors of the Federal Reserve System, August 17, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–21821 Filed 8–20–99; 8:45 am]

BILLING CODE 6210–01–P

GOVERNMENT PRINTING OFFICE

GPO Access; Meeting and Demonstration

The United States Government Printing Office (GPO) will conduct public demonstrations of its award winning free online service, GPO Access. These demonstrations are being held in order to increase public awareness of GPO Access as well as to provide an update on some new features and recent additions to the online service.

Some of the recent additions and enhancements to GPO Access include, online product ordering, site search, browseable CFR's, daily **Federal Register** Table of Contents, Congressional Bills Catalogs, etc. Visit GPO Access directly at http://www.access.gpo.gov/su__docs.

The demonstrations will be held at the United States Government Printing Office, Carl Hayden Room, 8th Floor, 732 North Capitol Street NW., Washington, DC, on Thursday, September 30th, from 9 a.m. to 10:30 a.m. and 11 a.m. to 12:30 p.m. There is no charge to attend. GPO is accessible via (Metro) Red Line at Union Station.

If you are interested in seeing what is available on GPO Access, you may reserve a seat for the demonstrations by contacting Robert Frierson, at the GPO's Office of Electronic Information Dissemination Services, by Internet e-mail at rfrierson@gpo.gov; by telephone: 202–512–1003; or by fax: 202–512–1262. Seating reservations will be accepted through Monday, September 27, 1999, or until filled.

Michael F. DiMario,

Public Printer.

[FR Doc. 99–21822 Filed 8–20–99; 8:45 am]

BILLING CODE 1505–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–17–99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. The Tri-State Mining District: Lead Exposure and Immunotoxic Effects Study in the Tri-State District—New—The Agency for Toxic Substance and Disease Registry (ATSDR)—The proposed study evaluates associations between immune system dysfunction/damage and exposure to lead among children in the Tri-State Mining District. This district encompasses several contaminated areas including three Superfund sites: The Oronogo-Duenweg Mining Belt site in Jasper County, Missouri; the Cherokee County Site in Kansas; and the Tar Creek, Ottawa County Site in Oklahoma.

The proposed study consists of two repeated in-person interviews and biological testing for blood lead and immune function among participants of the ongoing lead screening programs in the Tri-State Mining district. Approximately 50 children identified as having blood lead >10 micrograms per deciliter and 50 children with blood lead levels <5 micrograms per deciliter will constitute the study and comparison groups respectively. Blood specimens will be obtained to measure lead, complete blood count, EP, ZPP, antibody titers, and the CDC/ATSDR recommended immune panel. A second blood drawn a month later will examine intra-personal immune tests stability and will help evaluate the relationship between immune results and recent illness. Parents will be interviewed using a children's health questionnaire that solicits information on demographics, the medical history of each child and the occurrences of recent illness. Statistical analyses will compare health outcome measures (symptoms, illness, change in immune parameters) to blood lead levels. Other than their time, there will be no cost to the respondents. The length of clearance requested is for 1 year. Total annual burden hours are 125.

Form name	No. of respondents	No. of responses/ respondent	Avg. burden/ response (in hrs)
Verification	500	1	0.5

Form name	No. of respondents	No. of responses/ respondent	Avg. burden/ response (in hrs)
Pediatric Immune Questionnaire	100	2	0.5

Dated: August 17, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–21776 Filed 8–20–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meetings.

Name: Clinical Laboratory Improvement Advisory Committee (CLIAC).

Times and Dates: 8:30 a.m–5 p.m., September 22, 1999. 8:30 a.m.–3:30 p.m., September 23, 1999.

Place: CDC, Koger Center, Williams Building, Conference Rooms 1802 and 1805, 2877 Brandywine Road, Atlanta, Georgia 30341.

Status: Open to the public, limited only by the space available. The meeting rooms accommodate approximately 85 people.

Purpose: This committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters To Be Discussed: The agenda will include an update on CLIA implementation; presentations of data and discussion of laboratory workforce issues, including potential shortages of qualified laboratory personnel and the education/skill levels of current personnel.

The Committee solicits oral and written testimony on the laboratory workforce issues of potential shortages of qualified laboratory personnel and the education/skill levels of current personnel. Requests to make an oral presentation should be submitted in writing to the contact person listed below by close of business, September 16, 1999. All requests to make oral comments should contain the name, address, telephone number, and organizational affiliation of the presenter. Written comments should not exceed five single-spaced typed pages in length and should be received by the contact person listed below by close of business, September 16, 1999.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: John C. Ridderhof, Dr.P.H., Division of Laboratory Systems, Public Health Practice Program Office, CDC, 4770 Buford Highway, NE, M/S G–25, Atlanta, Georgia 30341–3724, telephone 770/488–8076, FAX 770/488–8282.

The Director, Management and Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 16, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–21775 Filed 8–20–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Fiscal Year 1999 Competitive Supplemental Funds for Comprehensive STD Prevention Systems: Monitoring Prevalence of STDs and TB Infection in Persons Entering Corrections Facilities.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Fiscal Year 1999 Competitive Supplemental Funds for Comprehensive STD Prevention Systems: Monitoring Prevalence of STDs and TB Infection in Persons Entering Corrections Facilities, Program Announcement # 99000–D.

Time and Date: 8:30 a.m.–9 a.m., September 2, 1999 (Open); 9 a.m.–4:30 p.m., September 2, 1999 (Closed).

Place: National Center for HIV, STD, and TB Prevention, CDC, Corporate Square, Building 10, Conference Room 1304, Atlanta, Ga. 30329.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to P.L. 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #99000–D. Due to administrative delays this notice is published less than 15 days prior to the meeting.

Contact person for more information: Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail eow1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 16, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–21769 Filed 8–18–99; 12:52 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Fiscal Year 1999 Competitive Supplemental Funds for Comprehensive STD Prevention Systems: Monitoring Trends in STD Prevalence, Tuberculosis, and HIV Risk Behaviors Among Men Who Have Sex With Men

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Fiscal Year 1999 Competitive Supplemental Funds for Comprehensive STD Prevention Systems: Monitoring Trends in

STD Prevalence, Tuberculosis, and HIV Risk Behaviors among Men Who have Sex with Men, Program Announcement # 99000–E.

Time and Date: 8:30 a.m.–9 a.m., September 1, 1999 (Open); 9 a.m.–4:30 p.m., September 1, 1999 (Closed).

Place: National Center for HIV, STD, and TB Prevention, CDC, Corporate Square, Building 12, Conference Room 1306, Atlanta, Ga. 30329.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement # 99000–E. Due to administrative delays this notice is published less than 15 days prior to the meeting.

Contact person for more information: Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail eow1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 16, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–21770 Filed 8–18–99; 12:52 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Cooperative Agreements for an Evaluation Research Study in the Area of Aggression and Interpersonal Youth Violence

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Cooperative Agreements for an Evaluation Research Study in the Area of Aggression and Interpersonal Youth Violence, Program Announcement # 99067.

Time and Date: 8 a.m.–8:30 a.m., August 31, 1999 (Open); 8:30 a.m.–5 p.m., August 31, 1999 (Closed).

Place: Atlanta Airport Hilton and Towers, Grand Salons A, B, and C, 1031 Virginia Avenue, Hapeville, GA 30354.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement # 99067. Due to administrative delays this notice is published less than 15 days prior to the meeting.

Contact Person for More Information: James Belloni, Office of the Director, National Center for Injury Prevention and Control, 4770 Buford Highway, NE, M/S K02, Atlanta, Georgia 30341–3724, telephone 770/488–4538, e-mail jsb1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 17, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–21771 Filed 8–18–99; 12:52 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Cooperative Agreement for a Coordinated Community Response to Prevent Intimate Partner Violence

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Cooperative Agreement for a Coordinated Community Response to Prevent Intimate Partner Violence, Program Announcement # 99133.

Times and Dates: 8:30 a.m.–9 a.m., August 26, 1999 (Open); 9 a.m.–5 p.m., August 26, 1999 (Closed); 8:30 a.m.–5 p.m., August 27, 1999 (Closed).

Place: National Center for Injury Prevention and Control, Conference Room 2052, 2945 Flowers Road South, Atlanta, Ga. 30341.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement # 99133. Due to administrative delays this notice is published less than 15 days prior to the meeting.

Contact Person for More Information: James Belloni, Office of the Director, National Center for Injury Prevention and Control, 4770 Buford Highway, NE, M/S K02, Atlanta, Georgia 30341–3724, telephone 770/488–4538, e-mail jsb1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 17, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–21772 Filed 8–18–99; 12:52 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project Title: Online Interstate Referral Guide (IRG).

OMB No.: New.

Description: The IRG is an essential reference maintained by the federal Office of Child Support Enforcement (OCSE) that provides State IV–D agencies with the information needed to process interstate cases. The online version of the IRG will provide States with an effective and efficient way of viewing and updating State profile, address, and FIPS code information by consolidating data available through numerous discrete sources into a single centralized, automated repository.

Respondents: Federal, State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Online IRG	54	18	.3	292

Estimated Total Annual Burden Hours: 292.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 17, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–21747 Filed 8–20–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2532]

Determination That Astemizole 10-Milligram Tablets Were Withdrawn From Sale for Safety Reasons

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that astemizole 10-milligram (mg) tablets (Hismanal) were withdrawn from sale for safety reasons. The agency will not accept or approve abbreviated new drug applications (ANDA's) for astemizole 10-mg tablets.

FOR FURTHER INFORMATION CONTACT: Andrea C. Masciale, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of approved innovator drug products under an ANDA procedure. ANDA sponsors generally must show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a drug that was previously approved under a new drug application (NDA). Sponsors of ANDA's are not required to repeat the extensive clinical testing necessary to gain approval of an NDA. The only data from investigations required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products with Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162 (21 CFR 314.162)). FDA may not approve an ANDA that does not refer to a listed drug (21 CFR 314.92(a)).

Astemizole 10-mg tablets (Hismanal) are the subject of approved NDA 19–402, currently held by Janssen Pharmaceutica (Janssen). In 1988, FDA approved the NDA for Hismanal tablets for the relief of symptoms associated with seasonal allergic rhinitis and chronic idiopathic urticaria. On June 18, 1999, Janssen withdrew Hismanal tablets from sale in the United States. The agency's review of the withdrawal of astemizole 10-mg tablets (Hismanal) from the market has considered the sponsor's explanation of the basis for the withdrawal of the product and information available to the agency regarding Hismanal. The current evidence supports the conclusion under § 314.161 (21 CFR 314.161) that astemizole 10-mg tablets (Hismanal) were withdrawn from the market for safety reasons.

The agency has determined, under § 314.161, that astemizole 10-mg tablets (Hismanal) were withdrawn from the market for safety reasons. Accordingly, the agency will remove astemizole 10-mg tablets (Hismanal) from the ''Orange Book'' (§ 314.162). FDA will not accept or approve ANDA's that refer to this drug product.

Dated: August 13, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–21813 Filed 8–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2670]

Antiviral Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Antiviral Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Dates and Time: The meeting will be held on November 2 and 3, 1999, from 8:30 a.m. to 5 p.m. Interested persons and organizations may submit written comments by September 30, 1999, to the Dockets Management Branch (address below).

Location and Addresses: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Contact Person: Rhonda W. Stover or John B. Schupp, Center for Drug Evaluation and Research, (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or the FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12531. Please call the Information Line for up-to-date information on this meeting.

Agenda: Presentations and committee discussions will address issues related to testing for development of resistant human immunodeficiency virus (HIV–1), with an emphasis on its potential role in antiretroviral drug development. The primary objectives of these deliberations are to obtain advisory committee recommendations on the amount and type of resistance data needed to support both preclinical and clinical development of antiretroviral drugs and product labeling. This 2-day meeting will explore the following scientific issues: (1) Performance characteristics of genotypic and phenotypic assays, (2) definitions of antiviral drug resistance, (3) relationships between the development of mutations or reduced susceptibility and treatment outcome, and (4) available evidence supporting the clinical utility of testing for the development of antiviral drug resistance. In order to prepare presentations and discussions for the meeting, the agency is requesting interested persons to submit in writing the following types of relevant data, information, and views:

- Pre-clinical and/or clinical trial data on the relationship between the development of HIV mutations and changes in susceptibility to antiviral therapies.
- Prospective or retrospective clinical trial data on the relationship between genotype and/or phenotype and treatment outcome.
- Proposals for incorporating HIV resistance testing in clinical trial design.
- Proposals for utilizing information derived from HIV resistance testing to support product labeling.

These submissions should contain the following docket number, 99N–2670, and should be made to the Dockets Management Branch address provided previously in this document.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 27, 1999. Oral presentation from the public will be scheduled between approximately 1 p.m. and 2 p.m. on November 3, 1999. Time allotted for each presentation may be limited. Written submissions may be made to the contact person by October 27, 1999. Those desiring to make formal oral presentations should notify the contact person before October 27, 1999, 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 requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 13, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–21729 Filed 8–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 16 and 17, 1999, 8 a.m. to 5 p.m.

Location: Holiday Inn, Kennedy Grand Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Contact Person: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 16, 1999, the committee will discuss: (1) New drug application (NDA) 21–053, UFT® (tegafur and uracil) Capsules, Bristol-Myers Squibb Co., indicated, with leucovorin calcium tablets, for the first-line treatment of metastatic colorectal cancer; and (2) NDA 50–772, Evacet™ (doxorubicin HCl liposome injection), The Liposome Co., Inc., indicated for the first-line treatment of metastatic breast cancer in combination with cyclophosphamide. On September 17, 1999, the committee will discuss: (1) NDA 20–262/S–033, TAXOL® (paclitaxel) Injection, Bristol-Myers Squibb Co., indicated for the adjuvant treatment of node-positive breast cancer administered sequentially to standard combination therapy; and (2) biologics license application (BLA) 97–1001, Roferon®-A, Hoffman-La Roche Inc., indicated for use as adjuvant treatment of surgically resected malignant melanoma without clinical evidence of nodal disease, American Joint Committee on Cancer stage II (Breslow thickness>1.5 millimeter, N0). In addition, FDA will provide an update on the preliminary results of EST 1690 (ECOG intergroup study of INTRON A for the adjuvant treatment of melanoma) for discussion by the committee.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 8, 1999. Oral presentations from the public will be scheduled between approximately 8:15 a.m. and 8:45 a.m., and between approximately 1:15 p.m. and 1:30 p.m. on September 16, 1999, and between approximately 8:15 a.m. and 8:45 a.m., and between approximately 1:15 p.m. and 1:30 p.m. on September 17, 1999. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 8, 1999, 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 requested to make their presentation. After the scientific presentations, a 30-minute open public session will be conducted for interested persons who have submitted their

request to speak by September 8, 1999, to address issues specific to the submission or topic before the committee.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 13, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–21812 Filed 8–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Applicant: Missouri Department of Conservation, Jefferson City, Missouri.

The applicant requests a permit to take (collect) endangered *Cambarus aculabrum* (cave crayfish, no common name) in the State of Missouri. Activities are proposed for the enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: US Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5343); FAX: (612/713–5292).

Dated: August 17, 1999.

T.J. Miller,

Acting Program Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 99–21844 Filed 8–20–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Ballast Water Effectiveness and Adequacy Criteria; Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces the second meeting of the Ballast Water Effectiveness and Adequacy Criteria Committee. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Committee will meet from 1:00 p.m. to 4:30 p.m., on Thursday, September 9, 1999.

ADDRESSES: The meeting will be held at the National Oceanic and Atmospheric Administration (NOAA) complex, SSMC–IV, Room 1–W–611 (first floor), 1305 East West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at: sharon__gross@fws.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 1), this notice announces a meeting of the Aquatic Nuisance Species Task Force Ballast Water Program Effectiveness and Adequacy Criteria Committee. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

The Committee was established in 1997 to establish and periodically resolve criteria for assessing the effectiveness and adequacy of the national ballast water management program in reducing the introduction and spread of nonindigenous species. The ANS Task Force is required to develop criteria for determining the adequacy and effectiveness of the voluntary ballast water management guidelines and subsequent regulations promulgated by the U.S. Coast Guard. The focus of this meeting will be to: review the Committee's overall responsibilities; establish objectives and goals for the requirements for which criteria are sought; discuss the process for developing the criteria; and set a preliminary time-frame for developing the criteria.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: August 18, 1999.

Rowan Gould,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries.

[FR Doc. 99–21810 Filed 8–20–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–040–1220–00]

Closure for Shay Line Trestle, Order ID–060–18

AGENCY: Bureau of Land Management, Upper Columbia-Salmon Clearwater District, Challis Resource Area, Idaho, Interior.

ACTION: Notice of Closure for Shay Line Trestle, Order ID–060–18.

SUMMARY: By order, the historic Shay Line railroad trestle, located on Bureau of Land Management (BLM) administered land, is temporarily closed to all use. This action affects only the historic Shay Line trestle located in T. 6 N., R. 24 E., Sec. 6, NW¼NW¼ Custer County, Idaho. This closure will remain in effect until the structural safety of the trestle can be more completely investigated and a determination made on whether it can be restored to a safe condition or be closed permanently. The purpose of temporarily closing the trestle is for public safety. A preliminary inspection by a professional engineer has disclosed potential problems which require further investigation to determine if the trestle can be restored.

The authority for establishing this closure is Title 43, Code of Federal Regulations, § 8364.1.

This closure is effective August 23, 1999.

Violation of this order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed one year.

FOR FURTHER INFORMATION CONTACT: Renee Snyder, Challis Area Manager, Rt. 2 Box 610, Salmon, Idaho 83467. Telephone (208) 756–5400.

Dated: August 10, 1999.

Renee Snyder,

Area Manager.

[FR Doc. 99–21553 Filed 8–20–99; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Nevada Temporary Closure of Certain Public Lands Managed by the Bureau of Land Management, Las Vegas Field Office

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Temporary closure of selected public lands in Clark County, Nevada, during the operation of the 1999 SCORE INTERNATIONAL ''LAS VEGAS PRIMM 300'' Desert Race.

SUMMARY: The Field Office Manager of the Las Vegas Field Office announces the temporary closure of selected public lands under its administration. This action is being taken to help ensure public safety, prevent unnecessary environmental degradation during the official permitted running of the 1999 SCORE INTERNATIONAL ''LAS VEGAS PRIMM 300'' Desert Race and to comply with provisions of the U.S. Fish and Wildlife Service's Biological Opinion for Speed Based Off-Highway Vehicle Events (1–5–95–F–237).

DATES: From 6:00 a.m. September 10, 1999 through 12:01 a.m. September 12, 1999 Pacific Standard Time.

Closure Area: As described below, an area within T. 23 S. to T. 27 S. R. 59 E. to R. 61 E.

1. The closure is a triangular shaped area bound by Interstate I–15 (between Sloan and State line) on the west; the crest of the McCullough Mountains on the east; and the California/Nevada State line on the south. Exceptions to the closure are: State Route 161, Old Las Vegas Blvd.

2. The entire area encompassed by the designated course and all areas outside the designated course as listed in the legal description above are closed to all vehicles except Law Enforcement, Emergency Vehicles, and Official Race Vehicles. Access routes leading to the course are closed to vehicles.

3. No vehicle stopping or parking.

4. Spectators are required to remain within designated spectator area only.

5. The following regulations will be in effect for the duration of the closure, unless otherwise authorized no person shall:

a. Camp in any area outside of the designated spectator areas.

b. Enter any portion of the race course or any wash located within the race course.

c. Spectate or otherwise be located outside of the designated spectator area.

d. Cut or collect firewood of any kind, including dead and down wood or other vegetative material.

e. Possess and or consume any alcoholic beverage unless the person has reached the age of 21 years.

f. Discharge, or use firearms, other weapons or fireworks.

g. Park, stop, or stand any vehicle outside of the designated spectator areas.

h. Operate any vehicle including an off-highway vehicle (OHV), which is not legally registered for street and highway operation, including operation of such a vehicle in spectator viewing areas, along the race course, and in designated pit areas.

i. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or feature. Vehicles so parked are subject to citation, removal and impoundment at owners expense.

j. Take a vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier or device.

k. Fail to keep their site free of trash and litter during the period of occupancy, or fail to remove all personal equipment, trash, and litter upon departure.

l. Violate quiet hours by causing an unreasonable noise as determined by the authorized officer between the hours of 10:00 p.m. and 6:00 a.m. Pacific Standard Time.

m. Allow any pet or other animal in their care to be unrestrained at any time.

n. Fail to follow orders or directions of an authorized officer.

o. Obstruct, resist, or attempt to elude a Law Enforcement Officer or fail to follow their orders or direction.

Signs and maps directing the public to designated spectator areas will be provided by the Bureau of Land Management and the event sponsor.

The above restrictions do not apply to emergency vehicles and vehicles owned by the United States, the State of Nevada or Clark County. Vehicles under permit for operation by event participants must follow the race permit stipulations.

Operators of permitted vehicles shall maintain a maximum speed limit of 25 mph on all BLM roads and ways. Authority for closure of public lands is found in 43 CFR 8340 subpart 8341; 43 CFR 8360, subpart 8364.1 and 43 CFR 8372. Persons who violate this closure order are subject to fines and or arrest as prescribed by law.

FOR FURTHER INFORMATION CONTACT: Dave Wolf Recreation Manager or Ron Crayton or Ken Burger, BLM Rangers, BLM Las Vegas Field Office, 4765 Vegas Dr., Las Vegas, Nevada 89108, (702) 647–5000.

Dated: August 5, 1999.

Michael F. Dwyer,

Las Vegas Field Office Manager.

[FR Doc. 99–21744 Filed 8–20–99; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01]

Notice of Opening of Public Lands; Washoe County, NV

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Notice is hereby given that certain public lands in the vicinity of the Wedekind Mining District near Sparks, Nevada are now opened to the public. This Notice is based on completion of site remediation, removal of fencing and site reclamation.

EFFECTIVE DATE: The effective date of this Notice is September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Jo Ann Hufnagle, Realty Specialist, Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701. Telephone (775) 885–6000.

SUPPLEMENTARY INFORMATION: On October 1, 1993, the site was closed for public safety due to soil contamination by TNT and DNT.

The public lands affected by this Notice lie within the area described as follows:

Mount Diablo Meridian

T. 20 N., R. 20 E.,
Sec. 28, SW¼SE¼.

A map of the subject lands is available in the Carson City Field Office.

Dated this 11th day of August, 1999.

Karl Kipping,

Associate Manager, Carson City Field Office.

[FR Doc. 99–21745 Filed 8–20–99; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–09–1210–00; GP9–0288, OR–37654]

Notice of Reality Action; Bureau of Motion Recreation and Public Purposes (R&PP) Act Classification; R&PP Act Patent; OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands south of Vale, Malheur County, Oregon have been examined and found suitable for conveyance to the Snake River Sportsmen, Inc., under the provisions of the Recreation and Public Purposes Act of 1926, as amended (43 U.S.C. 869 *et seq.*). The lands were leased in 1986 for the development of a shooting range complex. The Snake River Sportsmen, Inc. propose to continue to use the lands for a shooting range complex.

Willamette Meridian, Oregon

T. 19 S., R. 45 E.,
Sec. 4, lots 5 and 8, SW¼NW¼, W½SW¼; 161.86
Sec. 5, SE¼NE¼; 200.00
Sec. 8, NE¼NE¼; 40.00
Sec. 9, NW¼NW¼; 40.00

The lands described above contain 441.86 acres more or less.

These lands are not needed for Federal purposes. The conveyance is in conformance with current BLM and local land use planning and would be in the public interest. The patent, when issued, will be subject to the following terms, convenants, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Those rights for water pipeline and road purposes reserved to the BLM under Right-of-Way Reservation OR–54692.

5. Those rights for electric powerline purposes granted to Idaho Power Company under Right-of-Way OR–48516.

Provided, that title shall revert to the United States upon a finding, after notice and opportunity for a hearing, that, without the approval of the Secretary of the Interior or his delegate, the patentee or its successor attempts to transfer title to or control over the lands to another, the lands have been devoted to a use other than that for which the lands were conveyed, the lands have not been used for the purpose for which the lands were conveyed for a 5-year period, or the patentee has failed to follow the approved development plan or management plan.

The following public lands south of Vale, Malheur County, Oregon have been examined and found suitable for classification and opening under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*).

Willamette Meridian, Oregon

T. 19 S., R. 45 E.,
Sec. 4, SE¼SW¼.

The lands described above contain 40.00 acres more or less.

This action is a motion by the Bureau of Land Management to add the subject lands to other public lands currently under lease and identified for conveyance to the Snake River Sportsmen, Inc. These lands are not needed for federal purposes. The classification and conveyance of these lands would be in the public interest, and would conform with existing BLM and local land use plans. The patent, when issued, will be subject to the same terms, covenants, conditions and reservations, where applicable, as described above.

Detailed information concerning this action is available for review at the office of the Vale District, Bureau of Land Management (BLM), 100 Oregon Street, Vale, Oregon 97918.

Application Comments

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, the proposed classification of the lands or any other factor to the District Manager, Vale District Office, 100 Oregon Street, Vale, Oregon 97918. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice. Upon the effective date of classification, an application filed under the Recreation and Public Purposes Act for these lands will be accepted.

Steven C. Egeline,

Acting District Manager.

[FR Doc. 99–21835 Filed 8–20–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–00] ES–50427, Group 22, Illinois

Notice of Filing of Plat of Survey; Illinois

The plat of the dependent resurvey of a portion of the north boundary, and the survey of a portion of the Rend Lake Acquisition, Boundary, Township 5 South, Range 3 East, 3rd Principal Meridian, Illinois, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on September 13, 1999.

The survey was requested by the U.S. Army Corps of Engineers.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia, 22153, prior to 7:30 a.m., September 13, 1999.

Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: July 30, 1999.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 99–21624 Filed 8–20–99; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–00] ES–50426, Group 19, Illinois

Notice of Filing of Plat of Survey; Illinois

The plat of the dependent resurvey of a portion of the subdivisional lines, and the survey of a portion of the subdivision of sections 23 and 26 and a portion of the Rend Lake Acquisition Boundary, Township 4 South, Range 2 East, 3rd Principal Meridian, Illinois, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on September 13, 1999.

The survey was requested by the U.S. Army Corps of Engineers

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., September 13, 1999.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: July 30, 1999.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 99–21625 Filed 8–20–99; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–00] ES–50425, Group 28, Missouri

Notice of Filing of Plat of Survey; Missouri

The plat of the dependent resurvey of a portion of the subdivisional lines, the survey of a portion of the subdivision of section 18 and a portion of the Wappapello Lake acquisition boundary, in Township 28 North, Range 6 East of the 5th Principal Meridian, Missouri, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on September 13, 1999.

The survey was requested by the U.S. Army Corps of Engineers.

All inquiries or protests concerning the technical aspects of the survey may be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia, 22153, prior to 7:30 a.m., September 13, 1999.

Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: July 30, 1999.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 99–21623 Filed 8–20–99; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–00; GP9–0287]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 9 S., R. 2 E., accepted July 1, 1999
T. 3 N., R. 3 W., accepted July 1, 1999
T. 20 S., R. 6 W., accepted July 1, 1999
T. 39 S., R. 2 W., accepted July 8, 1999
T. 31 S., R. 7½ W., accepted July 29, 1999
T. 27 S., R. 14 E., accepted July 29, 1999

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey, and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: August 11, 1999.

Robert D. DeViney, Jr.,

Branch of Realty and Records Services.

[FR Doc. 99–21746 Filed 8–20–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

National Park Service

Comprehensive Management and Use Plan for the California and Pony Express National Historic Trails, Management and Use Plan Update for the Oregon and Mormon Pioneer National Historic Trails/Final Environmental Impact Statement

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of Final Environmental Impact Statement for Oregon, California, Mormon Pioneer, and Pony Express National Historic Trails.

SUMMARY: Pursuant to section 102 (2) (c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a final environmental impact statement and comprehensive management and use plan (FEIS/CMP) for the Oregon, California, Mormon Pioneer, and Pony Express National Historic Trails.

DATES: A 30-day no-action period will follow the Environmental Protection Agency's notice of availability of the FEIS/CMP.

ADDRESSES: Public reading copies of the FEIS/CMP will be available for review at the Long Distance Trails Office, 324 S. State St., Suite 250, Salt Lake City, UT 84145 (801) 539–4095.

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80228, (303) 9699–2851 [or (303) 969–2832].

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Street NW, Washington, D.C. 20240, (202) 208–6843.

SUPPLEMENTARY INFORMATION: This Final Environmental Impact Statement for the Comprehensive Management and Use Plan presents a proposal and an alternative for guiding the future management of the four national historic trails. The plan serves as a coordinating document that provides broad-based policies, guidelines, and standards for administering the four trails in such a manner, as to ensure the protection of trail resources, their interpretation and continued use. Both alternatives aim to balance resource preservation and use. Alternative 1 (current conditions) reflects the wide variability in the administration and management, resource protection strategies, and interpretation, visitor experience and visitor use that exists today. Alternative 2 (the proposal) focuses on enhancing resource protection and visitor use. It calls for an improved visitor experience through integrated development and programming and a comprehensive strategy for resource protection, including an ambitious program to inventory and monitor resources that would bring together, in one location, information currently dispersed.

FOR FURTHER INFORMATION CONTACT: Superintendent Long Distance Trails Office at the above address and phone number.

Dated: August 6, 1999.

Jere L. Krakow,

Superintendent, Long Distance Trails Office, National Park Service.

[FR Doc. 99–21802 Filed 8–20–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Comprehensive Management Plan for the Merced Wild and Scenic River, Yosemite National Park, Mariposa and Madera Counties, California; Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: Pursuant to § 102(2)(c) of the National Environmental Policy Act of 1969 (Public Law 91–190) and Council on Environmental Quality regulations (40 CFR 1508.22), the National Park Service intends to prepare an Environmental Impact Statement for a Comprehensive Management Plan that encompasses protection and enhancement of the values for which the Merced River was designated as a Wild and Scenic River. During the ensuing conservation planning-impact analysis process, management alternatives will be developed which will address resource protection, development of lands or facilities, user capacities, and various stewardship practices necessary or desirable to achieve the purposes of the Wild and Scenic Rivers Act of 1968, as amended. The Merced River planning process will be conducted in consultation with affected federal agencies, State and local governments, tribal groups, and interested organizations and individuals.

Background

The National Park Service has previously completed the tasks of establishing detailed boundaries, classifying segments of the Merced River as either wild, scenic, or recreational (as required by 16 USC 1274(b)), and identifying the outstandingly remarkable values (ORV) for each river segment. These factors were presented for public review and comment in the 1996 Draft Yosemite Valley Housing Plan (Addendum/Supplement to the Final Environmental Impact Statement for the General Management Plan). The Merced River planning process will incorporate that information (and germane comments) into the preparation of the Environmental Impact Statement for the Merced River Comprehensive Management Plan (MCMP/EIS).

Scoping Results

The MCMP/EIS is being prepared by the NPS pursuant to the Wild and Scenic Rivers Act, as amended (16 USC 1274(d)). The NPS has completed the scoping phase through a concerted public involvement effort, including the following activities. An invitation letter initiating scoping and announcing four public meetings was mailed to over 8,500 individuals, organizations, agencies, and other entities during the week of June 7, 1999. On June 11, 1999 the NPS formally noticed the MCMP scoping period in the **Federal Register** (V64–N112–P31605), accepting comments through July 14, 1999. Altogether six public meetings were held in San Francisco (June 22), Modesto (June 23), Mariposa (June 24), Yosemite Valley (June 28), Wawona (July 7), and El Portal (July 12). In addition to direct mailing and the internet, all meetings were publicized via news releases sent to over 110 media contacts on June 3 and July 1, 1999. In deference to public interest, the NPS on July 13, 1999 via direct mailing and news release issued a two-week extension of the scoping period through July 30, 1999. Formal notice of the extension appeared in the **Federal Register** on July 23, 1999 (V64–N141–P40037).

Results of Scoping and Future Information

As a result of the scoping effort which elicited over 330 responses, it has been determined that an Environmental Impact Statement (not an Environmental Assessment) will be prepared. All comments received during June 11–July 30 in response to the scoping and extension notices have been duly considered, and will remain in the administrative record throughout this conservation planning-impact analysis process. In addition to the considerations mentioned above, as a direct result of the public responses received the following issues will be considered: recreational use; commercial use; access for persons with disabilities; riparian habitat protection; private property in Wawona; the river boundaries; development in Yosemite Valley within the corridor; and air, water, and noise pollution.

Updated information about various aspects of the Merced River planning process will be periodically distributed via newsletters, mailings, the Yosemite National Park Webpage (http://www.nps.gov/yose/planning), and regional and local news media. To request placement on MCMP/EIS mailing list, please leave your name and address on the voice mail telephone at (209) 372–0261—interested individuals, organizations, and agencies may also respond to: Superintendent, Attn: CMP/EIS, P.O. Box 577, Yosemite National Park, CA 95389.

Decision Process

On July 12, 1999 a federal judge ordered the NPS to complete a Comprehensive Management Plan for the Merced Wild and Scenic River within twelve (12) months. This ruling stemmed from a lawsuit brought by plaintiffs opposing the ongoing reconstruction of State Highway 140 (El Portal Road) along the first seven miles of the highway situated within the park. Consequently the MCMP/EIS effort will proceed on the following compressed time schedule:

The Draft CMP/EIS is anticipated to be available for public review and comment during January and February 2000. Availability of the Draft document for review and written comment will be announced by formal Notice in the **Federal Register**, through local and regional news media, Yosemite's Webpage, and direct mailing. Comments on the Draft CMP/EIS will be fully considered, and incorporated into a Final CMP/EIS as appropriate. At this time it is anticipated that the Final CMP/EIS will be completed during early June 2000. Subsequently, notice of an approved Record of Decision will be published in the **Federal Register** not sooner than thirty (30) days after the Final CMP/EIS is distributed. This is expected to occur by mid-July of 2000. The official responsible for the decision is the Regional Director, Pacific West Region, National Park Service; the official responsible for implementation is the Superintendent, Yosemite National Park.

Dated: August 13, 1999.

Martha K. Leicester,

Acting Regional Director, Pacific West.

[FR Doc. 99–21801 Filed 8–20–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Park Service, Mojave National Preserve Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Mojave National Preserve Advisory Commission will be held September 28–29, 1999; assemble at 1:00 P.M. at the Needles Women's Club, Needles, California.

The agenda: Interpretative Plan Overview and Scoping Session.

The Advisory Commission was established by Pub. L. #103–433 to provide for the advice on development and implementation of the General Management Plan.

Members of the Commission are:

Micheal Attaway, Irene Ausmus, Rob Blair, Peter Burk, Dennis Casebier, Donna Davis, Kathy Davis, Gerald Freeman, Willis Herron, Elden Hughes, Claudia Luke, Clay Overson, Norbert Riedy, Mal Wessel.

This meeting is open to the public.

Mary Martin,

Superintendent, Mojave National Preserve.

[FR Doc. 99–21803 Filed 8–20–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2014–99]

Immigration and Naturalization Service User Fee Advisory Committee: Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

Committee meeting: Immigration and Naturalization Service User Fee Advisory Committee.

Date and time: Tuesday, November 16, 1999, at 1 pm.

Place: Immigration and Naturalization Service Headquarters, 425 I Street NW., Washington, DC 20536, Shaughnessy Conference Room—6th Floor.

Status: Open. 20th meeting of this Advisory Committee.

Purpose: Performance of advisory responsibilities to the Commissioner of the Immigration and Naturalization Service pursuant to section 286(k) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(k) and the Federal Advisory Committee Act, 5 U.S.C. app. 2. The responsibilities of this standing Advisory Committee are to advise the Commissioner of the Immigration and Naturalization Service on issues related to the performance of airport and seaport immigration inspection services. This advice should include, but need not be limited to, the time period during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. These responsibilities are related to the assessment of an immigration user fee pursuant to section 286(d) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(d). The Committee focuses attention on those areas of most concern and benefit to the travel industry, the traveling public, and the Federal Government.

Agenda:

1. Introduction of the Committee members.
2. Discussion of administrative issues.
3. Discussion of activities since last meeting.
4. Discussion of specific concerns and questions of Committee members.
5. Discussion of future traffic trends.
6. Discussion of relevant written statements submitted in advance by members of the public.
7. Scheduling of next meeting.

Public participation: The meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify the contact person at least 5 days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting to the contact person for consideration by this Advisory Committee. Only written statements received by the contact person at least 5 days prior to the meeting will be considered for discussion at the meeting.

Contact person: Charles D. Montgomery, Office of the Assistant Commissioner, Inspections, Immigration and Naturalization Service, Room 4064, 425 I Street NW., Washington, DC 20536.

Telephone: (202) 616–7498
Fax: (202) 514–8345
E-mail:
charles.d.montgomery@usdoj.gov

Dated: August 16, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 99–21748 Filed 8–20–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2013–99]

Announcement of District Advisory Council on Immigration Matters Seventh Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

SUMMARY: The Immigration and Naturalization Service (Service), has established a District Advisory Council on Immigration Matters (DACOIM) to provide the New York District Director of the Service with recommendations on ways to improve the response and reaction to customers in the local jurisdiction, and to develop new partnerships with local officials and community organizations to build and enhance a broader understanding of immigration policies and practices. The purpose of this notice is to announce the forthcoming meeting.

DATES AND TIMES: The Seventh meeting of the DACOIM is scheduled for September 23, 1999, at 1 p.m.

ADDRESSES: The meeting will be held at the Jacob Javitts Federal Building, 26 Federal Plaza, Room 537, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: Christian A. Rodriguez, Designated Federal Officer, Immigration and Naturalization Service, 26 Federal Plaza, Room 14–100, New York, New York 10278, telephone: (212) 264–0736.

SUPPLEMENTARY INFORMATION: Meetings will be held tri-annually on the fourth Thursday during the months of January, May, and September 1999.

Summary of Agenda

The purpose of the meeting will be to conduct general business, review subcommittee reports, and facilitate public participation. The DACOIM will be chaired by Charles Troy, Assistant District Director for Management, New York District, Immigration and Naturalization Service.

Public Participation

The DACOIM meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify the contact person at least two (2) days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting for consideration by the DACOIM. Written statements should be sent to Christian A. Rodriguez, Designated Federal Officer, Immigration and Naturalization Service, 26 Federal Plaza, Room 14–100, New York, New York 10278, telephone: (212) 264–0736. Only written statements received by 5 p.m. on September 21, 1999, will be considered for presentation at the meeting. Minutes of the meeting will be available upon request.

Dated: August 16, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 99–21749 Filed 8–20–99; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request.

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR 9, Public Records.

3. The form number if applicable: N/A.

4. How often the collection is required: On occasion.

5. Who will be required to report: Individuals requesting access to records under the Freedom of Information or Privacy Acts, or to records that are already publicly available in the NRC Public Document Room.

6. An estimate of the number of responses: 13,656.

7. The estimated number of annual respondents: 13,656.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 3,459.

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not Applicable.

10. Abstract: 10 CFR Part 9 establishes information collection requirements for individuals making requests for records under the Freedom of Information (FOIA) or Privacy Acts (PA). It also contains requests to waive or reduce fees for searching for and reproducing records in response to FOIA requests; and requests for expedited processing of requests. The information required from the public is necessary to identify the records they are requesting; to justify requests for waivers or reductions in searching or copying fees; or to justify expedited processing.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by September 22, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Erik Godwin, Office of Information and Regulatory Affairs (3150–0043), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 16th day of August 1999.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–21796 Filed 8–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Boston Edison Company; Notice of Withdrawal of Application for Approval of Indirect Transfer of Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Boston Edison Company (BECo) to withdraw its February 3, 1999, application, as supplemented on May 27, 1999, by BECo for approval of the indirect transfer of the Facility Operating License for the Pilgrim Nuclear Power Station (Pilgrim).

The application was seeking approval of the indirect transfer of the Facility Operating License for Pilgrim held by BECo. The indirect transfer would have resulted from the planned formation of a new holding company, NSTAR, of which Commonwealth Energy System and BEC Energy, the parent company of BECo, are to become wholly owned subsidiaries. The approval is no longer needed since BECo sold its interest in Pilgrim to Entergy Nuclear Generation Company on July 13, 1999, and no longer holds the license for Pilgrim.

The Commission had previously issued a Notice of Consideration of Approval of Application Regarding Proposed Corporate Merger and Opportunity for Hearing published in the **Federal Register** on June 17, 1999 (64 FR 32556). However, by letter dated July 20, 1999, the applicant, through counsel, withdrew the application.

For further details with respect to this action, see the application dated February 3, 1999, as supplemented May 27, 1999, and the applicant's letter dated July 20, 1999, which withdrew the application for approval of the indirect transfer. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Plymouth Public Library, 132 South Street, Plymouth, Massachusetts 02360.

Dated at Rockville, Maryland, this 17th day of August 1999.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–21793 Filed 8–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Company; Zion Nuclear Power Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License Nos. DPR–39 and DPR–48, issued to Commonwealth Edison Company (ComEd or the licensee) for the Zion Nuclear Power Station (ZNPS) Units 1 and 2, located in Lake County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed exemption would exempt the ZNPS, because of its permanently shutdown and defueled status, from certain requirements of 10 CFR 50.47(b) regarding onsite and offsite emergency response plans and 10 CFR 50.47(c)(2) to establish plume exposure and ingestion pathway emergency planning zones.

The proposed action is in accordance with the licensee's application for exemption dated April 13, 1999, as

supplemented by letters dated July 8 and July 19, 1999.

The Need for the Proposed Action

ZNPS was shut down permanently in February 1997. ComEd certified the permanent shutdown on February 13, 1998, and on March 9, 1998, certified that all fuel had been removed from the reactor vessels. In accordance with 10 CFR 50.82(a)(2), upon docketing of the certifications, the facility operating license no longer authorizes ComEd to operate the reactor or to load fuel into the reactor vessel. In this permanently shutdown condition, the facility poses a reduced risk to public health and safety. Because of this reduced risk, certain requirements of 10 CFR 50.47 are no longer required. An exemption is required from portions of 10 CFR 50.47(b) and (c)(2) to allow the licensee to implement a revised defueled station emergency plan (DSEP) that is appropriate for the permanently shutdown and defueled reactor facility.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the granting of the exemption will not increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the Zion Nuclear Power Station, Units 1 and 2, dated December 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on August 4, 1999, the staff consulted with the Illinois State official, Mr. Gary Wright, of the Illinois Department of Nuclear Safety (IDNS) regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated April 13, 1999, as supplemented by letters dated July 8 and July 19, 1999, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document room located at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 13th day of August 1999.

For the Nuclear Regulatory Commission.

Dino C. Scaletti,

Project Manager, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–21794 Filed 8–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 070–3073]

Finding of No Significant Impact Related to Amendment of Materials License No. SNM–1999, Kerr-McGee Corp., Cushing Refinery Site Cushing, Oklahoma

The U.S. Nuclear Regulatory Commission (NRC) is considering issuing a license amendment to Materials License No. SNM–1999, held by the Kerr-McGee Corporation (Kerr-McGee or the licensee), to authorize remediation of its Cushing Refinery Site (Cushing site) located in Cushing, Oklahoma.

Summary of Environmental Assessment

Background

Kerr-McGee has environmental responsibility for a former refinery site near the city of Cushing, Oklahoma. The refinery opened around 1912 and was purchased by Kerr-McGee in 1956. During the early 1960s, in addition to petroleum processing, Kerr-McGee processed uranium fuel and thorium metal in several buildings onsite under licenses issued by the Atomic Energy Commission (AEC). The uranium fuel and thorium processing area was decommissioned, the property and facilities were released for unrestricted use, and the license was terminated by the AEC. Kerr-McGee continued to operate the refinery until 1972, at which time it was torn down. In May 1990, Kerr-McGee entered into a Consent Order with the Oklahoma State Department of Health (now referred to as the Oklahoma Department of Environmental Quality) (DEQ), addressing the investigation and remediation of the Cushing refinery site. The DEQ Consent Order divided the site work into radiological and non-radiological remediation efforts. The non-radiological remediation is being performed in a manner similar to the Federal Superfund Remedial Investigation/Feasibility Study (RI/FS) process. On April 6, 1993, NRC issued Materials License SNM–1999 to the Kerr-McGee Corporation, for the radiological decommissioning of its Cushing site. This license authorized the licensee to possess radioactive contaminated soil, sludge, sediment, trash, building rubble, and any other contaminated material, at its Cushing site.

Proposed Action

The licensee has proposed to remediate its Cushing Refinery site. The purpose of this remediation effort is to remove radioactive contamination to levels such that the site can be released for unrestricted use. Kerr-McGee has performed a radiological characterization survey of the site. Those areas found to contain radioactive contamination were designated as radioactive material areas (RMAs). In this action, Kerr-McGee is proposing to collect the radioactive contaminated material that exceeds NRC's Branch Technical Position (BTP) [1] Disposal Option 1 (Option 1), package this

[1] Disposal or Onsite Storage of Thorium or Uranium Waste from Past Operations (46 FR 52061, October 23, 1981).

material, and ship this material to the Envirocare Low-Level Radioactive Waste Disposal Site in Clive, Utah, for disposal. The licensee will perform a final survey of the site to determine if the site has been remediated in accordance with the approved Cushing site decommissioning plan and the criteria for unrestricted release of the site have been achieved. The results of this final site survey will be submitted to the NRC for its review. Based on the results provided in this final survey report and NRC confirmatory survey findings, the NRC will terminate Materials License SNM–1999.

The Need for Proposed Action

The proposed action is necessary to remove the contamination that exists at the Cushing site. This action will facilitate remediation of this site to a condition suitable for unrestricted release and is one of the actions necessary for termination of Kerr-McGee's Cushing site Materials License SNM–1999.

Alternative to Proposed Action

An alternative to the proposed action is a no-action alternative. The no-action alternative would mean that the Cushing site would not be remediated at this time. This conflicts with NRC's requirement, in Title 10 of the Code of Federal Regulations (CFR) 70.38, of timely remediation at sites that have ceased operations. Although there is no immediate threat to the public health and safety from this site as long as the licensee maintains appropriate controls over the radioactive material, not undertaking remediation, at this time, does not resolve the regulatory and potential long-term health and safety problems involved in storing this waste. No action now would delay remediation until some time in the future, when costs could be much higher than they are today. It is even possible that no disposal option will be available in the future if the current low-level radioactive waste disposal facilities are closed and no new ones are opened. Therefore, the no-action alternative is not acceptable.

Environmental Impacts of Proposed Action

Radiological impacts on members of the public may result from inhalation and ingestion of releases of radioactivity in air and in water during the remediation operations, direct exposure to radiation from radioactive material at the site during remediation operations, and transport for disposal. Decommissioning workers may receive doses primarily by ingestion, inhalation, and direct exposure during the remediation activities. In addition to impacts from routine operations, the potential radiological consequences of accidents were considered.

NRC staff considered the potential impacts of the proposed Cushing site remediation activities on the local ground-water supply. The licensee stated that the regional ground-water aquifer is isolated from the uppermost water-bearing zone by a low permeability strata. Further, the licensee's ground-water monitoring program thus far has not detected radioactive contamination of the shallow ground-water. Additionally, DEQ stated the following: (1) The shallow ground-water unit yields low quantities of poor quality water; (2) it is highly unlikely that future residential or commercial drinking water wells will be established from the shallow ground-water at this site; and (3) no known drinking water wells are screened in the shallow ground-water within 1.6 km (1 mile) radius of the site. Also, DEQ stated that the shallow ground-water should not be considered a viable drinking water source for the area, and that DEQ would consider water quality standards other than maximum contamination levels, as set by the U.S. Environmental Protection Agency (EPA), as appropriate for the shallow ground-water at this site. Further, based on EPA guidance, the shallow ground-water would be classified as a ''Class III—Groundwater Not a Potential Source of Drinking Water and of Limited Beneficial Use.'' NRC staff has determined that removing radioactive contamination from the Cushing site would not cause ground-water contamination. Although, the removal of radioactive contamination from the Cushing site would reduce the potential of future contamination of the local ground-water supply.

The licensee has evaluated the potential for exposure to both a member of the public and a radiation worker that would result from remediation of the Cushing site and from a remediation of the largest area that requires remediation, respectively. The results of the licensee's analyses indicate that the upper bound doses resulting from remediation activities would be: (1) 0.18 mlli-sievert (mSv) [18 milli-roentgen-equivalent-man (mrem)] total effective dose equivalent (TEDE) for a member of the public; and (2) 1.4 mSv (140 mrem) TEDE, to a radiation worker. Thus, the radiological consequences of remediating the Cushing site are insignificant for both members of the public and radiation workers. The results are well within the regulatory limits as specified in 10 CFR part 20.

The licensee also evaluated the potential for exposure from conditions that would result from several postulated accident scenarios. The licensee considered accident scenarios for both onsite and offsite accidents. The licensee found that the worst-case credible accidents were the result of contaminated wastes being spilled. The offsite worst-case credible accident was a single intermodal container holding 12.6 cubic meters (m^3) (450 cubic feet (ft^3)) of contaminated waste soil being spilled in transit. The resulting dose to the worker cleaning up the spilled material was 0.35 mSv (35 mrem) TEDE and for a member of the public the resulting dose was 0.0015 mSv (0.15 mrem). The onsite worst-case credible accident was a single container holding 0.2 m^3 (7.5 ft^3) of contaminated waste soil being spilled. The resulting dose to the worker cleaning up the spilled material was 0.11 mSv (11 mrem) TEDE.

The results of the licensee's analyses were considered estimates of upper bound doses resulting from worst-case, but credible, potential accidents. The results indicate that the radiological consequences of the potential accidents involving radioactive waste spillage are insignificant for both a member of the public and a radiation worker cleaning up the spilled waste and would result in doses to that are well within the regulatory limits as specified in 10 CFR part 20.

Further, the low-level waste disposal facility, Envirocare, is eligible to receive Cushing waste. The Envirocare facility is regulated under State of Utah rules for land disposal of radioactive wastes. Disposal at the Envirocare facility will provide for long-term institutional control and minimize the potential for human intrusion and other environmental impacts. Waste will be packaged and shipped in accordance with NRC and Department of Transportation requirements. Therefore, NRC staff believes that disposing of the Cushing site radiologically contaminated wastes at the Envirocare facility will not cause any significant impacts on the human environment and is acceptable.

The NRC staff also considered nonradiological impacts and concluded that all such impacts are negligible.

Further, the conclusion in the staff's Environmental Assessment was that the remediation of the Cushing site represented an insignificant risk to the public health and safety and the human environment. Therefore, NRC concluded that there are no environmental justice issues related to the remediation of the Cushing site.

Conclusions

Based on NRC staff's evaluation of the licensee's Cushing site decommissioning plan, NRC staff has determined that the proposed plan complies with NRC's public and occupational dose and effluent limits, and that authorizing the proposed activities by license amendment would not be a major Federal action significantly affecting the quality of the human environment. NRC staff concludes that a finding of no significant impact is justified and appropriate, and that an environmental impact statement is not required. In accordance with the requirements of subpart L of 10 CFR part 2, an Opportunity for a Hearing was offered.[2]

Alternative Use of Resources

The activities leading to the proposed action would result in the irreversible use of energy resources in the conduct of the proposed Cushing site remediation. In addition, a portion of the Envirocare facility will be irreversibly committed for the disposal of Cushing site waste. There is no reasonable alternative to these resource uses, and the proposed action does not involve any unreviewed conflicts concerning use of available resources.

Agencies and Persons Consulted, and Sources Used

The Environmental Assessment on which the finding of no significant impact is based was prepared by the NRC staff in the Office of Nuclear Material Safety and Safeguards, Rockville, MD. NRC staff provided a draft of its Environmental Assessment to DEQ for review. DEQ in its letter Dated July 12, 1999, stated that they had no comments.

Finding of No Significant Impact

Pursuant to 10 CFR part 51, NRC has prepared an environmental assessment related to the issuance of a license amendment to Materials License SNM–1999, authorizing remediation of the Cushing Refinery Site. On the basis of this environmental assessment, NRC has concluded that this licensing action would not have any significant effect on the quality of the human environment and does not warrant the preparation of an environmental impact statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

Further Information

For further details with respect to this action, the Environmental Assessment and other documents related to this proposed action are available for public inspection and copying at NRC's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 12th day of August 1999.

For the U.S. Nuclear Regulatory Commission,

Larry W. Camper,

Chief Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–21730 Filed 8–20–99; 8:45 am]

BILLING CODE 7590–01–P

[2] 60FR 46318 (September 6, 1995).

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278]

PECO Energy Co.; Peach Bottom Atomic Power Station, Units 2 and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DRP–44 and DRP–56, issued to PECO Energy Company (the licensee), for operation of the Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, located in York County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would correct existing editorial and typographical errors in the Technical Specification (TSs). Each proposed change has been verified to meet the intent of what was originally proposed by PECO Energy and approved by the NRC in previously processed amendments to the TSs. These changes are purely administrative and do not impact the operation of the facility. The proposed changes are summarized below.

1. Correct the labels for the Site Boundary and Exclusion Area Boundary on the Unit 2 and Unit 3 TS Figures 4.1–1 by reversing the labels.

2. Correct the note by replacing the word ''on'' with the word ''or'' in the Unit 3 TS Surveillance Requirement (SR) 3.3.1.2.5.

3. Correct the note above TS SR 3.8.4.1 by replacing ''SR 3.8.1.9'' with ''SR 3.8.4.9'' in the Unit 3 TS Section 3.8.4.

The proposed action is in accordance with the licensee's application for amendment dated February 12, 1999, as supplemented by letter dated July 8, 1999.

The Need for the Proposed Action

When PBAPS Units 2 and 3, were converted to the Standard TSs under Amendments 210 and 214 respectively, Figure 4.1–1 of the TSs incorrectly reversed the depiction of the Site Boundary and the Exclusion Area Boundary. This mistake occurred during the licensee's conversion of the old TS Figure 3.8.1, ''Gaseous and Liquid Effluent Release Points,'' to the new TS Figure 4.1–1, ''Site and Exclusion Area Boundaries.'' To correct this error, the proposed TS Amendment is required to reflect that there is no change in the Exclusion Area or Site Boundaries and to correctly show that the Site Boundary resides outside of the Exclusion Area and outlines the area owned by the licensee related to PBABS Units 2 and 3.

In PBAPS Unit 3 TS Surveillance Requirement SR 3.3.1.2.5, there is a note that reads, ''Not required to be performed until 12 hours after WRNMs indicate 125E–5% power on below.'' There is a typographical error in the note in that the note should read ''* * * power or below.''

In TS SR 3.8.4.1, there is a note that reads, ''SR through SR 3.8.4.8 are applicable only to the Unit 3 DC electrical power subsystems. SR 3.8.1.9 is applicable only to the Unit 2 DC electrical power subsystems.'' There is a typographical error in that SR 3.8.1.9 should read SR 3.8.4.9 which is being corrected by the licensee's amendment application.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the modifications to the Technical Specifications are administrative in nature.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant

environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Peach Bottom Atomic Power Station, Units 2 and 3.

Agencies and Persons Consulted

In accordance with its stated policy, on May 14, 1999, the staff consulted with the Pennsylvania State official, Mr. David Ney of the Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 12, 1999, as supplemented by letter dated July 8, 1999, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17150.

Dated at Rockville, MD, this 12th day of August 1999.

For the Nuclear Regulatory Commission.

Bartholomew C. Buckley, Sr.,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–21731 Filed 8–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Laboratory Testing of Nuclear-Grade Activated Charcoal (ERRATA); Issue

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued the errata for a typographical error that was found in Generic Letter (GL) 99–02. GL 99–02 addresses the laboratory testing of nuclear-grade activated charcoal that is used in the safety-related air-cleaning units of engineered safety feature ventilation systems of nuclear power plants to reduce the potential onsite and offsite consequences of a radiological accident by adsorbing iodine.

The typographical error makes the sentence in which it appears technically incorrect. This sentence appears in two places, namely, in Requested Actions 2 and 3, on page 7 of the generic letter. The affected sentence reads ''If the system has a face velocity greater than *10* percent of 0.203 m/s (40 ft/min), then the revised TS [technical specification] should specify the face velocity.'' This sentence should read ''If the system has a face velocity greater than *110* percent of 0.203 m/s (40 ft/min), then the revised TS should specify the face velocity.''

DATES: The errata was issued on August 23, 1999.

ADDRESSEES: Not applicable.

FOR FURTHER INFORMATION CONTACT: John P. Segala, at 301–415–1858.

SUPPLEMENTARY INFORMATION: The errata is available in the NRC Public Document Room under accession number 9908060152.

Dated at Rockville, Maryland, this 17th day of August 1999.

For the Nuclear Regulatory Commission.

Scott F. Newberry,

Deputy Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–21797 Filed 8–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–1080 (which should be mentioned in all correspondence concerning this draft guide), is a proposed Revision 3 of Regulatory Guide 1.149 and is titled ''Nuclear Power Plant Simulation Facilities for Use in Operator Training and License Examinations.'' This proposed revision is being developed to update the NRC's guidance on the certification of a simulation facility consisting solely of a plant-referenced simulator.

The draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by October 20, 1999.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@nrc.gov*. For information about the draft guide and the related documents, contact Mr. F. Collins, (301) 415–3173; e-mail JFC1@NRC.GOV.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and

Distribution Services Section; or by fax to (301) 415–2289, or by e-mail to <DISTRIBUTION@NRC.GOV>. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 5th day of August 1999.

For the Nuclear Regulatory Commission.

Charles E. Ader,

Director, Program Management, Policy Development & Analysis Staff, Office of Nuclear Regulatory Research.

[FR Doc. 99–21795 Filed 8–20–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Postal Service Board of Governors; Sunshine Act Meeting

TIMES AND DATES: 1:00 p.m., Monday, August 30, 1999; 8:30 a.m., Tuesday, August 31, 1999.

PLACE: Washington, D.C., at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room.

STATUS: August 30 (Closed); August 31 (Open).

MATTERS TO BE CONSIDERED:

Monday, August 30–1:00 p.m. (Closed)

1. Postal Rate Commission Opinion and Recommended Decision in Docket No. MC99–4, Bulk Parcel Return Service (BPRS).
2. Filing with the Postal Rate Commission for an Experimental Periodical Ride-Along Rate.
3. Rate Case Briefing.
4. Financial Performance.
5. Annual Performance Plan—Government Performance and Results Act.
6. Personnel Matters.

Tuesday, August 31—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, August 2–3, 1999.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Postal Rate Commission FY 2000 Budget.
4. Capital Investments.
   a. Brooklyn, New York, General Post Office Lease.
   b. Bronx, New York, P&DC Exterior Renovations.
   c. Los Angeles, California, Bulk Mail Center Expansion.
5. Tentative Agenda for the October 4–5, 1999, meeting in Kansas City, Missouri.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 99–21923 Filed 8–19–99; 1:50 p.m.]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension

Rule 11Ac1–1 SEC File No. 270–404 OMB Control No. 3235–0461
Rule 12d2–1 SEC File No. 270–98 OMB Control No. 3235–0081
Rule 12d2–2 SEC File No. 270–86 OMB Control No. 3235–0080

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 11Ac1–1, Dissemination of Quotations, contains two related collections of information necessary to disseminate market makers' published quotations to buy and sell securities to the public. The first collection of information is found in Rule 11Ac1–1(c), 17 CFR 240.11Ac1–1(c). This reporting requirement obligated each ''responsible broker or dealer,'' as defined under the rule, to communicate to its exchange or association its best bids, best offers, and quotation sizes for any subject security, as defined under the rule. The second collection of information is found in Rule 11Ac1–1(b), 17 CFR 240.11Ac1–1(b). This reporting requirement obligates each exchange and association to make available to quotation vendors for dissemination to the public the best bid, best offer, and aggregate quotation size for each subject security.[1] Brokers, dealers, other market participants, and members of the public rely on published quotation information to determine the best price and market for execution of customer orders.

It is anticipated that 721 respondents, consisting of 180 exchange specialists and 541 OTC market makers, will make 246,788,000 total annual responses pursuant to Rule 11Ac1–1, resulting in an annual aggregate burden of approximately 205,356 hours.

Rule 11Ac1–1 does not impose a retention period for any recordkeeping requirements. Compliance with the rule is mandatory and the information collected is made available to the public. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Rule 12d2–1 provides the procedures by which a national securities exchange may suspend from trading a security that is listed and registered on the exchange. Under Rule 12d2–1, an exchange is permitted to suspend from trading a listed security in accordance with its rules, and must promptly notify the Commission of any such suspension, along with the effective date and the reasons for the suspension.

Any such suspension may be continued until such time as the Commission may determine that the suspension is designed to evade the provisions of Section 12(d) of the Act and Rule 12d2–1 thereunder.[2] During the continuance of such suspension under Rule 12d2–1, the exchange is required to notify the Commission promptly of any change in the reasons for the suspension. Upon the restoration to trading of any security suspended under Rule 12d2–1, the exchange must notify the Commission promptly of the effective date of such restoration.

Notices of suspension of trading serve a number of purposes. First, they inform the Commission that an exchange has suspended from trading a listed security or reintroduced into trading a previously suspended security. They also provide the Commission with information necessary for it to verify that the suspension has been effected in accordance with the rules of the exchange, and to determine whether the

[1] A third requirement under Rule 11Ac1–1, as amended at 17 CFR 250.11Ac1–1(c)(5), gives electronic communications networks (''ECNs'') the option of reporting to an exchange or association for public dissemination, on behalf of their OTC market maker or exchange specialist customers, the best priced orders and the full size for such orders entered by market makers, to satisfy such market makers' reporting obligation under Rule 11Ac1–1(c). Because this reporting requirement is an alternative method of meeting the market makers' reporting obligation, and because it is directed to nine or fewer persons (ECNs), this collection of information is not subject to OMB review under the Paperwork Reduction Act.

[2] Rule 12d2–2 prescribes the circumstances under which a security may be delisted, and sets forth the procedures for taking such action.

exchange has evaded the requirements of Section 12(d) of the Act and Rule 12d2–2 thereunder by improperly employing a trading suspension. Without Rule 12d2–1, the Commission would be unable to fulfill these statutory responsibilities.

There are eight national securities exchanges which are subject to Rule 12d2–1. The burden of complying with the rule is not evenly distributed among the exchanges, however, since there are many more securities listed on the New York Stock Exchange and American Stock Exchange than on the other six exchanges.[3] However, for purposes of estimating the overall burden, the staff has assumed that the number of responses would be evenly distributed among the exchanges. The Commission estimates a total annual burden of 48 hours to comply with Rule 12d2–1. This estimate is based on eight respondents with 12 responses per year for a total of 96 responses requiring on average one-half hour per response.

Based on information acquired in an informal survey of the exchanges and the staff's experience in administering related rules, the Commission staff estimates that the respondents' cost of compliance with Rule 12d2–1 may range from less than $25 to as much as $100 per response. The staff has computed the average related cost per response to be approximately $29, representing one-half reporting hour. The estimated total annual related cost of responding to the requirements of Rule 12d2–1 is approximately $2.748, *i.e.*, eight exchanges filing 12 responses at $29 each.

Compliance with Rule 12d2–1 is mandatory. There are no recordkeeping requirements associated with Rule 12d2–1. Information received in response to Rule 12d2–1 shall not be kept confidential; the information collected is public information.

Rule 12d2–2, Removal from Listing and Registration, (17 CFR 240.12d2–2, and Form 25, 17 CFR 249.25, were adopted in 1935 and 1952, respectively, pursuant to Section 12 and 23 of the Act. Rule 12d2–2 sets forth the conditions and procedures under which a security may be delisted. Rule 12d2–2 also requires, under certain circumstances, that an exchange file with the Commission a Form 25 to remove a security from listing and registration on the exchange and to serve as notification of such delisting. Form 25 provides the Commission with the name of the affected security and issuer, the effective date of the delisting, and the date and type of event predicating the delisting.

Delisting notices and applications for delisting serve a number of purposes. First, the reports and notices required under paragraphs (a) and (b) of Rule 12d2–2 (which do not require Commission action) inform the Commission that a security previously traded on an exchange is no longer traded there. In addition, the applications for delisting required under paragraphs (c) and (d) of the Rule (which require Commission approval) provide the Commission with the information necessary for it to determine that a delisting has been promulgated in accordance with the rules of the exchange, and to determine whether the delisting is subject to any terms or conditions necessary for the protection of investors. Further, notice of a delisting application submitted by an issuer pursuant to subparagraph (d) of Rule 12d2–2 is made available to members of the public who may wish to comment or submit information to the Commission regarding such application. Without Rule 12d2–2 and Form 25, as applicable, the Commission would be unable to fulfill these statutory responsibilities.

There are eight national securities exchanges which are subject to Rule 12d2–2 and Form 25. Additionally, any issuer whose security is listed on a national securities exchange which seeks to remove such security from listing and registration on that exchange would be subject to the requirements of subparagraph (d) of Rule 12d2–2. Since the reporting hour burdens incurred in responding to the various requirements of Rule 12d2–2 and Form 25 are not uniform (it generally takes an exchange less time to complete Form 25, when required by subparagraph (a) of Rule 12d2–2, than it does to prepare an application under subparagraph (c) thereof, for example), the Commission staff has, for purposes of its estimation of overall burden, averaged the various reporting burdens and then weighted reporting hours by respondent group, ascribing proportionately smaller burdens (and related costs) to the exchanges, which prepare and file both Forms 25 and applications under Rule 12d2–2 in the routine course of business, while ascribing greater individual burdens (and related costs) to affected issuers, who are subject only to the application requirements of subparagraph (d) of Rule 12d2–2 (and not Form 25), though issuers becoming so subject would likely only be obligated to respond once.[4] Finally, although the burdens of complying with Rule 12d2–2 and Form 25 are not evenly distributed among the exchanges, since there are many more securities listed on the New York Stock Exchange and the American Stock Exchange than on the other national securities exchanges, the staff has assumed, solely for the purpose of making these estimates, that the number of responses would be evenly distributed among the exchanges.

Based on information acquired in an informal survey of the exchanges and issuers obligated to respond, and based further on the staff's experience in administering related rules, the Commission staff estimates that in complying with Rule 12d2–2 and Form 25 all exchanges would incur an aggregate reporting hour burden of 350 hours. The Commission estimates the costs associated with these burden hours to be $20,300 in the aggregate. For issuers obligated to respond to Rule 12d2–2, the staff estimates it receives approximately 50 responses annually from issuers wishing to remove their securities from listing and registration on exchanges. Assuming an average of two reporting hours per response, the Commission estimates an aggregate annual reporting hour burden for these issuers of 100 burden hours, and a related aggregate cost of approximately $8,300.

Compliance with Rule 12d2–2 and the filing of Form 25 are mandatory. There are no recordkeeping requirements associated with Rule 12d2–2 or with Form 25. Information received in response to Rule 12d2–2 and Form 25 shall not be kept confidential; the information collected is public information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive

[3] In fact, some exchanges do not file any trading suspension reports in a given year.

[4] An issuer is only obliged to file an application under Rule 12d2–2 when it is voluntarily seeking to withdraw its securities from listing and registration on an exchange. The most common situation in which this occurs is when an issuer has listed its securities on multiple exchanges and then, in an effort to reduce costs and/or market fragmentation attributable to such multiple listing, elects to confine listing of securities to the exchange it deems to be the primary marketplace.

Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 13, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21756 Filed 8–20–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act 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 August 23, 1999.

A closed meeting will be held on Wednesday, August 25, 1999 at 11:00 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 will 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 the closed meeting.

Commissioner Carey, 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 Wednesday, August 25, 1999, at 11:00 a.m., will be:

Institution of injunctive actions.
Settlement of injunctive actions.
Institution and settlement of administrative proceedings of an enforcement nature.
Formal order of investigation.

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 at (202) 942–7070.

Dated: August 18, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21905 Filed 8–19–99; 1:08 pm]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3204]

State of Georgia

Chatham County and the contiguous counties of Bryan and Effingham in the State of Georgia, and Jasper County in the State of South Carolina constitute a disaster area as a result of damages caused by severe storms, heavy rain, and flooding that occurred on June 29, 1999. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on Oct. 14, 1999 and for economic injury until the close of business on May 15, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.875
Homeowners without credit available elsewhere	3.437
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 320406 for Georgia and 320506 for South Carolina. For economic injury the numbers are 9D6300 for Georgia and 9D6400 for South Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 8, 1999.

Fred P. Hochberg,

Acting Administrator.

[FR Doc. 99–21814 Filed 8–20–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster # 3199]

State of Iowa; (Amendment # 3)

In accordance with notices from the Federal Emergency Management Agency dated August 10 and 13, 1999, the above-numbered Declaration is hereby amended to include Harrison and Mills Counties in the State of Iowa as a disaster area due to damages caused by severe storms and flooding beginning on July 2, 1999 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Fremont and Page Counties in Iowa, and Burt and Cass Counties in Nebraska.

Any counties contiguous to the above-named counties and not listed herein have been previously declared.

This declaration is further amended to establish the incident period for this disaster as beginning on July 2, 1999 and continuing through August 10, 1999.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 19, 1999, and for economic injury the deadline is April 24, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 16, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–21816 Filed 8–20–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster # 3199]

State of Iowa; (Amendment # 2)

In accordance with a notice from the Federal Emergency Management Agency dated August 9, 1999, the above-numbered Declaration is hereby amended to include Linn, Pottawattamie, and Story Counties in the State of Iowa as a disaster area due to damages caused by severe storms and flooding beginning on July 2, 1999 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Boone, Cass, Hamilton, Harrison, Iowa, Jasper, Johnson, Marshall, Mills, Montgomery, Polk, and Shelby Counties in Iowa, and Douglas, Sarpy, and Washington Counties in Nebraska.

Any counties contiguous to the above-named counties and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 19, 1999, and for economic injury the deadline is April 24, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 12, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–21819 Filed 8–20–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3203]

State of Minnesota; (Amendment #3)

In accordance with a notice from the Federal Emergency Management Agency dated August 12, 1999, the above-numbered Declaration is hereby amended to include Cass County, Minnesota as a disaster area due to damages caused by severe storms, winds, and flooding beginning on July 4, 1999 and continuing through August 2, 1999.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Crow Wing, Hubbard, Morrison, Todd, and Wadena in the State of Minnesota may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 25, 1999 and for economic injury the deadline is April 28, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 16, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–21815 Filed 8–20–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3203]

State of Minnesota; (Amendment #2)

In accordance with a notice from the Federal Emergency Management Agency dated August 5, 1999, the above-numbered Declaration is hereby amended to include Lake County, Minnesota as a disaster area due to damages caused by severe storms, winds, and flooding beginning on July 4, 1999 and continuing through August 2, 1999.

All counties contiguous to the above-named county have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 25, 1999 and for economic injury the deadline is April 28, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 11, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–21818 Filed 8–20–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9D68]

State of New Hampshire (And Contiguous Counties in Massachusetts and Maine)

Rockingham County and the contiguous counties of Hillsborough, Merrimack, and Strafford in New Hampshire, Essex County, Massachusetts, and York County, Maine constitute an economic injury disaster loan area as a result of a fire that occurred on June 16, 1999 in the City of Hampton, New Hampshire. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on May 15, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd, South 3rd Floor, Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent. The economic injury number for Massachusetts is 9D69 and for Maine the number is 9D70.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: August 13, 1999.

Fred P. Hochberg,

Acting Administrator.

[FR Doc. 99–21817 Filed 8–20–99; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF STATE

[Public Notice No. 3111]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the twenty letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State [(703) 875–6644].

SUPPLEMENTARY INFORMATION:

Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: August 10, 1999.

William J. Lowell,

Director, Office of Defense Trade Controls.

United States Department of State

Washington, D.C. 20520

August 5, 1999.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for defense articles and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the amendment of a manufacturing license agreement with Turkey for the production of the Day and Night Thermal Sight Systems.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 125–98

United States Department of State

Washington, D.C. 20520

August 4, 1999.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing Licensing Agreement for the export of defense services under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the production, sale and maintenance of F–4E aircraft for use by the Japanese Air Self Defense Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 4–99

United States Department of State

Washington, D.C. 20520
August 5, 1999.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with Australia, Canada, Denmark, Germany, Greece, The Netherlands, Norway, Spain, and Turkey for the export of defense articles and defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the transfer of technical data and defense articles to support the international cooperative development and production of the Evolved SeaSparrow Missile (ESSM).

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 17–99

United States Department of State

Washington, D.C. 20520
August 5, 1999.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with Greece for the export of defense articles and defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the transfer of technical data and assistance for the manufacture of parts for the Hellenic HAWK Missile System Phase III and Launcher Mobility Upgrade program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 18–99

United States Department of State

Washington, DC 20520
August 5, 1999.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of technical assistance for delivery of 350 BLU–109/B/B Bombs, including FMU–143 Fuzes to the Greek Armed Forces.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 27–99

United States Department of State

Washington, DC 20520
August 5, 1999.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36 (c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement for the export of defense services under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves supporting WAH–64 Aircraft Aircrew and Maintenance Training, Services and Equipment in the United Kingdom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 43–99

United States Department of State

Washington, DC 20520
August 4, 1999.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36 (c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement for the export of defense services under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the manufacture of T–45 aircraft, its derivatives, and associated training systems, in the United Kingdom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 45–99

United States Department of State

Washington, DC 20520
August 4, 1999.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, engineering information, defense services and defense articles to the United Kingdom and Germany, for the manufacture of various hydraulic products and controls for military aircraft, marine and defense system applications.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though

unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 50–99

United States Department of State

Washington, DC 20520
August 5, 1999.

The Honorable Benjamin A. Gilman,
Chairman, Committee on International Relations, House of Representatives.

Dear Mr. Chairman: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing and Technical Assistance Agreement for the export of defense services under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the support and co-production of the Harpoon Weapon System in the Netherlands.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 52–99

United States Department of State

Washington, DC 20520
August 5, 1999.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the upgrade of fifty RGM–84D Harpoon Missiles for the Royal Danish Navy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 72–99

United States Department of State

Washington, D.C. 20520
August 4, 1999.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith notification of a proposed license for the export of defense articles or defense services in the amount of $50,000,000 or more.

The transaction contained in the attached notification involves the export of two Echostar commercial communications satellites to French Guiana for launch into outer space.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 73–99

United States Department of State

Washington, D.C. 20520
August 4, 1999.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of two remote sensing satellite and technical data to Russia for subsequent integration with a Russian space launch vehicles and launch from Plesetsk, Russia.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 79–99

United States Department of State

Washington, D.C. 20520
August 4, 1999.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture of Multiple Launch Rocket System (MLRS) launchers, spare parts, and practice rockets for use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 84–99

United States Department of State

Washington, D.C. 20520
August 4, 1999.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture in France of satellite transponders and antennas for return to the United States for use in commercial communication satellites.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 86–99

United States Department of State

Washington, D.C. 20520
August 4, 1999.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) & (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with the Republic of Korea.

The transaction described in the attached certification involves the manufacture of the ALR–85(V) I Radar Warning Receiver System for use on Republic of Korea Air Force F–4 and F–5 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 89–99

United States Department of State

Washington, D.C. 20520
August 4, 1999.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of production support, test, qualification and final integration of 300 GEC-Marconi Guided Munitions (GMGM) with the United Kingdom for use by the UAE Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs

Enclosure: Transmittal No. DTC 90–99

United States Department of State

Washington, D.C. 20520
August 4, 1999.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for defense articles and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the amendment of a Manufacturing License Agreement with Japan for the manufacture of the 7M Sparrow Missile (air-to-air) system pursuant to the ''Memorandum of Understanding'' between the United States and the Government of Japan for end use by the Japan Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 91–99

United States Department of State

Washington, D.C. 20520
August 5, 1999.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance for the manufacture in Japan of APG–66J Fire Control Radar for the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 94–99

United States Department of State

Washington, D.C. 20520
August 5, 1999.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Technical Assistance Agreement with Japan.

The transaction described in the attached certification involves the manufacture, assembly, operation, sale, maintenance, repair and modification of the CH–47 Model 414–100 Helicopter Series, for use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 96–99

United States Department of State

Washington, D.C. 20520
August 5, 1999.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves follow-on technical assistance agreements with Russia beyond those addressed in DTC 39–98, dated March 19, 1998, providing for the marketing and sale of satellite launch services utilizing Proton rocket boosters and the performance of associated integration and lauch services from Kazakhstan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 98–99

[FR Doc. 99–21840 Filed 8–20–99; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements filed during the week ending August 13, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–6083.
Date Filed: August 9, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 ME-AFR 0035 dated 10 August 1999
Mail Vote 023—TC2 from Middle East to Libya Resolution 010w
Intended effective date: 12 August 1999.

Docket Number: OST–99–6084.
Date Filed: August 9, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 EUR-AFR 0086 dated 10 August
Mail Vote 022—TC2 from Europe to Libya
Resolution 010v
Intended effective date: 15 August 1999.

Docket Number: OST–99–6087.
Date Filed: August 10, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 ME 0068 dated 7 July 1999
PTC2 ME 0072 dated 3 August 1999
Mail Vote 021—Within Middle East Resolutions r1–r15
Minutes—PTC2 ME 0069 dated 9 July 1999
Tables—PTC2 ME Fares 0027 dated 3 August 1999
Intended effective date: 1 January 2000.

Docket Number: OST–99–6090.
Date Filed: August 11, 1999.
Parties: Members of the International Air Transport Association.
Subject:
Mail Vote 027—TC12 Canada-Europe Special Passenger
Amending Resolution 010a circulated by message TE664 dated 11 August 1999
Intended effective date: 20 August 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–21836 Filed 8–20–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending August 13, 1999

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: OST–99–6085.
Date Filed: August 9, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 6, 1999.
Description: Application of American Airlines, Inc. pursuant to 49 U.S.C. Section 41108 and Subpart Q, applies for a certificate of public convenience and necessity to engage in foreign air transportation of persons, property and mail between a point or points in the United States, directly and via intermediate points, and a point or points in Italy, and beyond.

Docket Number: OST–99–6108.
Date Filed: August 13, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 10, 1999.
Description: Application of Delta Air Lines, Inc. pursuant to 49 U.S.C. Sections 41102 and 41108, and Subpart Q, applies for a new or amended Certificate of Public Convenience and Necessity authorizing Delta to provide scheduled foreign air transportation of persons, property and mail between Atlanta, Georgia and Buenos Aires, Argentina, and for allocation of seven (7) U.S.-Argentina frequencies.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–21837 Filed 8–20–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–6091]

Collection of Information by Agency Under Review by Office of Management and Budget

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520, the Coast Guard intends to request the approval of the Office of Management and Budget (OMB) for the renewal of twelve Information Collection Requests (ICRs). These ICRs comprise: 1. Application for Tonnage Measurement of Vessels, 2. Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels, 3. Records Relating to Citizenship of Personnel on Units Engaged in Outer Continental Shelf (OCS) Activities, 4. Oil and Hazardous Material Pollution Prevention and Safety Records, Equivalents/ Alternatives and Exemptions, 5. Ships Carrying Bulk Hazardous Liquids, 6. Barges Carrying Bulk Hazardous Materials, 7. Facilities Transferring Oil or Hazardous Materials in Bulk—Letter of Intent, 8. Oil and Hazardous Materials Transfer Procedures and Waste Management Plans, 9. Plan Approval and Records for Marine Engineering Systems—46 CFR Subchapter F, 10. National Response Resource Inventory, 11. Identification Markings on Lifesaving, Fire Protection, and Emergency Equipment, and 12. Periodic Gauging and Engineering Analyses for Certain Tank Vessels Over 30 Years Old. Before submitting the ICRs to OMB, the Coast Guard is asking for comments on the collections described below.

DATES: Comments must reach the Coast Guard on or before October 22, 1999.

ADDRESSES: You may mail comments to the Docket Management Facility [USCG–1999–6091], U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this Request. Comments will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

Copies of the complete ICRs are available through this docket on the Internet at http://dms.dot.gov and also from Commandant (G-SII–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document. With

questions on the docket, ask Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9330.

Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document [USCG–1999–6091] and the specific ICR to which each comment applies, and give the reason(s) for each comment. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* Application for Tonnage Measurement of Vessels.

OMB Control Number: 2115–0086.

Summary: The information for this collection is used to determine a vessel's tonnage. Tonnage in turn is used as a basis for licensing, inspection, safety requirements, and operating fees.

Need: 46 U.S.C. 14104 requires that before a vessel is documented or recorded under laws of the United States, or where the application of law of the United States to a vessel is determined by its tonnage, the vessel must be measured for tonnage.

Respondents: Vessel owners.

Frequency: On occasion.

Burden: The estimated burden is 27,600 hours annually.

2. *Title:* Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels.

OMB Control Number: 2115–0549.

Summary: The collection of information requires passenger vessels to have posted two placards, which contain safety and operating instructions on the use of cooking appliances that use liquefied gas or compressed natural gas.

Need: 46 U.S.C. 3306(a)(6) authorizes the Coast Guard to prescribe regulations for the use of vessel stores and other supplies of a dangerous nature. These regulations cover both uninspected and inspected passenger vessels.

Respondents: Owners and operators of passenger vessels.

Frequency: On occasion.

Burden: The estimated burden is 2,362 hours annually.

3. *Title:* Records Relating to Citizenship of Personnel on Units Engaged in Outer Continental Shelf (OCS) Activities.

OMB Control Number: 2115–0143.

Summary: Vessels and units engaged in activities on the OCS (exploration and exploitation of offshore resources such as gas and oil) must be manned and crewed by U.S. citizens or permanent resident aliens [43 U.S.C. 1356]. 33 CFR 141.35 requires employers to maintain records demonstrating compliance.

Need: This information is needed to ensure compliance with the statutory mandates to man or crew OCS facilities with U.S. citizens or permanent resident aliens.

Respondents: Operators of vessels and units engaged in activities on the OCS.

Frequency: On occasion.

Burden: The estimated burden is 412 hours annually.

4. *Title:* Oil and Hazardous Material Pollution Prevention and Safety Records, Equivalents/Alternatives and Exemptions.

OMB Control Number: 2115–0096.

Summary: This ICR requirement will minimize the number and impact of pollution discharges and accidents occurring during transfer of oil or hazardous materials. It will also help to evaluate proposed alternatives and requests for exemptions.

Need: This ICR is needed to (1) prevent or mitigate the results of an accidental release of bulk liquid hazardous materials being transferred at waterfront facilities; (2) ensure that facilities and vessels that use vapor-control systems are in compliance with the safety standards developed by the Coast Guard; (3) provide equipment and operational requirements for facilities and vessels that transfer oil or hazardous materials in bulk to or from any vessel with a capacity of 250 or more barrels; and (4) provide procedures for vessel or facility operators who request exemption or partial exemption from the requirements of the pollution-prevention regulations.

Respondents: Operators of facilities handling and vessels carrying bulk oil and hazardous materials.

Frequency: On occasion.

Burden: The estimated burden is 1,840 hours annually.

5. *Title:* Ships Carrying Bulk Hazardous Liquids.

OMB Control Number: 2115–0089.

Summary: The information in this report is required to ensure compliance with U.S. regulations governing ships carrying bulk hazardous liquids.

Need: 46 U.S.C. 3703 authorizes the Coast Guard to prescribe regulations for protection against hazards to life, property, and the marine environment. 46 CFR part 153 prescribes regulations for the safe transport by vessel of bulk hazardous liquids.

Respondents: Operators of chemical tank vessels.

Frequency: On occasion.

Burden: The estimated burden is 471 hours annually.

6. *Title:* Barges Carrying Bulk Hazardous Materials.

OMB Control Number: 2115–0541.

Summary: This ICR ensures the safe shipment of bulk hazardous liquids in barges. The reporting and recordkeeping requirements are necessary to ensure that barges meet safety standards and to ensure that crewmembers have the information necessary to operate barges safely.

Need: 46 U.S.C. 3703 directs the Coast Guard to prescribe regulations for the carriage of, among other things, cargoes of bulk liquid hazardous materials. 46 CFR part 151 prescribes the regulations for barges carrying cargoes of bulk liquid hazardous materials.

Respondents: Opertors of tank barges.

Frequency: On occasion.

Burden: The estimated burden is 11,724 hours annually.

7. *Title:* Facilities Transferring Oil or Hazardous Materials in Bulk—Letter of Intent.

OMB Control Number: 2115–0077.

Summary: Each waterfront facility that intends to transfer oil or hazardous materials in bulk to or from vessels must notify the Coast Guard Captain of the Port by submitting a letter of intent to operate. This letter identifies the owner and operator of the facility for purposes of enforcement and contact.

Need: 33 U.S.C. 1321 authorizes the Coast Guard to prescribe pollution-prevention regulations. 33 CFR 154.110 prescribes the regulations on letters of intent.

Respondents: Facility operators.

Frequency: On occasion.

Burden: The estimated burden is 460 hours annually.

8. *Title:* Oil and Hazardous Materials Transfer Procedures and Waste Management Plans.

OMB Control Number: 2115–0120.

Summary: This rule requires vessels with a capacity of 250 barrels or more of oil or hazardous materials to develop and maintain procedures which provide basic safety information for operating transfer systems. It also requires oceangoing ships of 40 feet or more in length, engaged in commerce or equipped with galleys or berths, to develop and maintain waste-management plans for the handling and disposal of ship-generated garbage.

Need: 33 U.S.C. 1221 and 1903 authorize the Coast Guard to prescribe

regulations to prevent pollution. 33 CFR part 155 prescribes such regulations including those related to transfer procedures, and 33 CFR part 151 prescribes such regulations including those related to waste-management plans.

Respondents: Owners and operators, of vessels and facilities.

Frequency: Annually.

Burden: The estimated burden is 14,302 hours annually.

9. Title: Plan Approval and Records for Marine Engineering Systems—46 CFR Subchapter F.

OMB Control Number: 2115–0142.

Summary: This collection of information requires owners and builders of commercial vessels to submit to the U.S. Coast Guard, for review and approval, plans for marine-engineering systems to ensure that the vessels will meet regulatory standards.

Need: 46 U.S.C. 3306 authorizes the Coast Guard to prescribe vessel-safety regulations including those related to marine-engineering systems. 46 CFR Subchapter F prescribes those requirements.

Respondents: Owners and builders of commercial vessels.

Frequency: On occasion.

Burden: The estimated burden is 3,433 hours annually.

10. Title: National Response Resource Inventory.

OMB Control Number: 2115–0606.

SUMMARY: The information in this collection should improve the effectiveness of deploying response equipment in the event of an oil spill. It may also serve in the development of contingency plans.

Need: Section 4202 of the Oil Pollution Act of 1990 (Pub. L. 101–380) required the Coast Guard to compile and maintain a comprehensive list of oil-spill-removal equipment. This collection helps fulfill that requirement.

Respondents: Oil-spill-removal organizations.

Frequency: On occasion.

11. Title: Identification Markings on Lifesaving, Fire Protection, and Emergency Equipment.

OMB Control Number: 2115–0577.

SUMMARY: Lifesaving, fire protection, and emergency equipment must be identified by its manufacturer, model number, capacity, approval number, and other information concerning its performance. Markings help the vessel owner and Coast Guard to determine compliance with regulations.

Need: 46 U.S.C. 3306 authorizes the Coast Guard to prescribe regulations for lifesaving, firefighting, and emergency equipment for use on inspected vessels. 46 CFR Subchapter Q prescribes equipment manufacturers' marking requirements, and other subchapters in title 46 prescribe vessel owners' and operators' marking requirements.

Respondents: Safety-equipment manufacturers and owners and operators, of vessels.

Frequency: On occasion.

Burden: The estimated burden is 4,012 hours annually.

12. Title: Periodic Gauging and Engineering Analyses for Certain Tank Vessels Over 30 Years Old.

OMB Control Number: 2115–0603.

Summary: The Oil Pollution Act of 1990 requires the issuance of regulations for the structural integrity of tank vessels, including periodic gauging of the plating thickness of tank vessels over 30 years old. This collection of information helps to verify the structural integrity of older tank vessels.

Need: 46 U.S.C. 3703 authorizes the Coast Guard to prescribe regulations related to tank vessels, including design, construction, alteration, repair, and maintenance. 46 CFR 31.10–21a prescribes the regulations related to periodic gauging and engineering analyses of certain tank vessels over 30 years old.

Respondents: Owners and operators of certain tank vessels.

Frequency: Every 5 years.

Burden: The estimated burden is 18,502 hours annually.

Dated: August 13, 1999.

G. N. Naccara,

Rear Admiral, U.S. Coast Guard, Director of Information and Technology.

[FR Doc. 99–21790 Filed 8–20–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–28]

Petitions for Exemption: Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 13, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Terry Stubblefield (202) 267–7624 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 18, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29592.

Petitioner: Continental Airlines, Inc. and Continental Micronesia Airlines, Inc.

Section of the FAR Affected: 14 CFR 121.577(a)

Description of Relief Sought: To permit Continental to move an airplane on the surface before takeoff or after landing when beverages or other containers provided by Continental to passengers are retained at the passenger's seat.

Docket No.: 29603.

Petitioner: Mr. James A. Atkins.

Sections of the FAR Affected: 14 CFR 43.3(g).

Description of Relief Sought: To permit Mr. James A. Atkins and pilots employed by him to perform certain preventive maintenance functions listed in paragraph (c) of appendix A to part 43 on an aircraft operating under 14 CFR part 135 without holding a mechanic certificate.

Docket No.: 29615.

Petitioner: T-Bird Aviation, Inc.

Section of the FAR Affected: 14 CFR 135.299(a).

Description of Relief Sought/ Disposition: To permit T-Bird pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a pilot-in-command line check in an aircraft.

Dispositions of Petitions

Docket No.: 25974.

Petitioner: Air Transport Association of America.

Section of the FAR Affected: 14 CFR 91.203.

Description of Relief Sought/ Disposition: To permit ATA-member airlines to operate certain U.S.-registered aircraft on a temporary basis following the incidental loss or mutilation of a Certificate of Airworthiness, aircraft registration certificate, or both.

Grant, 07/30/99, Exemption No. 5318F.

Docket No.: 26474.

Petitioner: Deere & Company.

Section of the FAR Affected: 14 CFR 21.197(a)(1).

Description of Relief Sought/ Disposition: To permit Deere to operate its Cessna Model CE–650 aircraft (registration Nos. N400JD, N600JD and N900JD, Serial Nos. 650–0035, 650–0236 and 650–0213, respectively) without obtaining a special flight permit when the flaps fail in the up position.

Grant, 7/26/99, Exemption No. 6581C.

Docket No.: 27230.

Petitioner: ERA Aviation, Inc.

Section of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit ERA Aviation to operate certain helicopters under the provisions of part 135 without a TSO–C112 (Mode S) transponder installed in each aircraft.

Grant, 7/30/99, Exemption No. 5718C.

Docket No.: 28552.

Petitioner: World Freefall Convention.

Section of the FAR Affected: 14 CFR 105.43(a).

Description of Relief Sought/ Disposition: To permit WWFC to allow nonstudent, foreign nationals to participate in WFFC-sponsored parachute jumping events held at WFFC's facilities without complying with the parachute equipment and packing requirements of § 105.43(a).

Grant, 7/29/99, Exemption No. 6930.

Docket No.: 29218.

Petitioner: Cessna Aircraft Company.

Section of the FAR Affected: 14 CFR 91.409(b).

Description of Relief Sought/ Disposition: To permit owners and operators of C–172R aircraft an exemption from 14 CFR § 91.409(b) to the extent necessary to use Cessna's PhaseCard IP in lieu of the 100-hour inspection required by that section.

Grant, 6/11/99, Exemption No. 6901.

Docket No.: 29386.

Petitioner: Mr. Archie D. Van Beek.

Section of the FAR Affected: 14 CFR 45.29(b)(1).

Description of Relief Sought/ Disposition: To permit Mr. Van Beek to operate his Maule M–5 (Registration No. 913VB, Serial No. 5001C) airplane displaying 3-inch-high nationality and registration markings instead of the 12-inch-high markings required by the regulations.

Denial, 7/26/99, Exemption No. 6931.

Docket No.: 29419.

Petitioner: Aviation Component Service Center General Electric Engine Services, Inc.

Section of the FAR Affected: 14 CFR 43.9(a)(4), 43.11(a)(3), appendix B to part 43, and 145.57(a).

Description of Relief Sought/ Disposition: To permit ACSC to use computer-generated electronic signatures in lieu of physical signatures to satisfy the requirements of FAA Form 8130–3, Airworthiness Approval Tag, when the form is used to satisfy approval for return-to-service signature requirements.

Grant, 7/21/99, Exemption No. 6926.

Docket No.: 29479.

Petitioner: Skydive U, Inc.

Section of the FAR Affected: 14 CFR 105.43(a).

Description of Relief Sought/ Disposition: To permit Skydive U to allow nonstudent foreign nationals to participate in Skydive U-sponsored parachute jumping events held at Skydive U's facilities without complying with the parachute equipment and packing requirements of § 105.43(a).

Grant, 7/22/99, Exemption No. 6928.

Docket No.: 29492.

Petitioner: Lynden Air Cargo.

Section of the FAR Affected: 14 CFR 121.344.

Description of Relief Sought/ Disposition: To permit Lynden Air Cargo to operate its four L382G Hercules aircraft (Registration Nos. N401LC, N402LC, N403LC, and N404LC; Serial Nos. 4606, 4698, 4590, and 4763, respectively) under part 121 without an approved DFDR.

Grant, 7/15/99, Exemption No. 6921.

[FR Doc. 99–21784 Filed 8–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development (R,E&D) Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA Research, Engineering and Development (R,E&D) Advisory Committee on Tuesday, September 14, and Wednesday, September 15. The meeting will be held at the Holiday Inn Rosslyn Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia.

On Tuesday, September 14 the meeting will begin at 9:00 a.m. and end at 5:00 p.m.

On Wednesday, September 15 the meeting will begin at 8:30 a.m. and end at 12:00 noon.

The meeting agenda will include receiving guidance from the Committee for FAA's fiscal year 2002 research and development investments in the areas of air traffic services, airports, aircraft safety, security, human factors and environment and energy.

Attendance is open to the interested public but limited to space available. Persons wishing to attend the meeting or obtain information should contact Lee Olson at the Federal Aviation Administration, AAR–200, 800 Independence Avenue, SW, Washington, DC 20591 (202) 267–7358.

Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on August 9, 1999.

Hugh M. McLaurin,

Program Director, Research Division.

[FR Doc. 99–21785 Filed 8–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Waivers of Compliance; Petition for Exemption for Technological Improvements

In accordance with Title 49 Code of Federal Regulations (CFR) Sections 211.9 and 211.41, and 49 U.S.C. 20306, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waiver of compliance with certain requirements of

the Federal railroad safety regulations and a request for exemption of certain statutory provisions. The individual petition is described below, including the party seeking relief, the regulatory and statutory provisions involved, the nature of the relief being sought and the petitioner's arguments in favor of relief.

New Jersey Transit Corporation; FRA Waiver Petition No. FRA–1999–6135

New Jersey Transit Corporation (NJ Transit) seeks a permanent waiver of compliance from certain CFR parts of Title 49, specifically: part 221, Rear End Marking Device—Passenger, Commuter and Freight Trains; part 223, Safety Gazing Standards—Locomotives, Passenger Cars and Cabooses; part 229, Railroad Locomotive Safety Standards; part 231 Railroad Safety Appliance Standards; part 238, Passenger Equipment Safety Standards; and part 239, Passenger Train Emergency Preparedness.

NJ Transit seeks approval of shared use and waiver of certain FRA regulations involving light rail passenger operations on the planned Southern New Jersey Light Rail Transit (SNJLRT) system. SNJLRT is a regional light rail transit system that will link the cities of Camden, NJ and Trenton, NJ, and provide local service along with bus, transit, and intra and intercity rail transfer connections to an area previously without light rail service. The SNJLRT project will cover 34 miles using a combination of street running alignment and existing railroad right-of-way to assist in meeting Southern New Jersey's mobility and congestion needs.

A portion of the SNJLRT will run over the existing Consolidated Rail Corporation (Conrail) Bordentown Secondary track, between MP 1.07 (Camden) and MP 33.1 (Trenton). The purpose of the waiver is for SNJLRT operations over this ''Shared Trackage'' because of its connection with the general railroad system of transportation. Conrail and NJ Transit have agreed that transit operations will have exclusive use of the Shared Trackage during the passenger period.

In each section entitled ''justification,'' FRA merely sets out NJ Transit's justifications which are included in its petition. In doing so, NJ Transit references the proposed Joint Policy Statement on Shared Used of the General Railroad System issued by FRA and the Federal Transit Administration (FTA) (64 FR 28238; May 25, 1999) (''Policy Statement''). The proposed policy statement suggests that regulation of light rail service on the general rail system, under conditions of temporal separation from conventional rail movements, be handled through application of complementary strategies. FRA regulations would generally be employed to address hazards common to light rail and conventional operations for which consistent handling is necessary, while other hazards would be handled under FTA's program of State Safety Oversight (49 CFR Part 659). See proposed Policy Statement for details. Since FRA has not yet concluded its investigation of the planned SNJLRT system, the agency takes no position at this time on the merits of NJ Transit's stated justifications. As part of FRA's review of the petition, the Federal Transit Administration will appoint a non-voting liaison to FRA's Safety Board, and that person will participate in the board's consideration of NJ Transits's waiver petition.

Part 221—Rear End Marking Device—Passenger, Commuter and Freight Trains

Section 221.13(a) requires each train that occupies or operates on main line track be equipped with a display on the trailing end of the rear car of that train, and continuously illuminated or flashing a marking device as prescribed in that subpart. Section 221.14(a) requires that passenger, commuter and freight trains be equipped with at least one such compliant marking device, which has been approved by FRA in accordance with the procedures included in Appendix A of part 221, and which has specific intensity, beam arc width, color and flash rate characteristics. The requirements are intended to reduce the likelihood of rear-end collisions attributable to the inconspicuity of the rear-end of a leading train.

Justification. NJ Transit requests a waiver from this requirement because the SNJLRT vehicle will be equipped with marking devices such as headlights, brake, tail, turn signal, clearance and marker lights, and reflectors similar to those required for highway vehicles as contained in NJDOT regulations. The NJDOT regulations adopt and incorporate by reference the Federal Highway Administration's (''FHWA'') Federal Motor Carrier Safety Regulations found at 49 CFR part 393.

The external illumination consists of a set of front headlights, turn signals, tail and brake lights, reflectors, clearance, and marker lights at each end of the bi-directional SNJLRT vehicles. One headlight is mounted next to each brake light, with the headlights capable of being switched from low to high beam. Turn signal lights are visible from both the front and sides of the vehicle. The mounting height and candela value of the lights provided is consistent with FHWA requirements for commercial motor vehicles contained in 49 CFR part 393. The SNJLRT vehicle exterior lighting was designed to match state highway vehicle requirements instead of FRA regulations because the SNJLRT vehicles will operate in two different environments: in streets running mixed with motor vehicle traffic and in a conventional railroad corridor. FRA-compliant rail car marker devices might not provide sufficient information to motor vehicle drivers and, therefore might be inappropriate for the in-street portion of the SNJLRT system. The SNJLRT specifications on the other hand, will provide a higher level of safety for in-street operations.

NJ Transit believes that safety on the conventional railroad corridor will not be compromised by the use of the SNJLRT marking devices. The SNJLRT vehicle will have tail and brake light and clearance lights to define the end contour of the vehicle, substantially similar to the marking devices required by FRA regulations. Any variation in illumination levels between SNJLRT vehicles and Conrail trains is not material because of the temporal separation of the operations.

Section 223.9(c)—Glazing Requirements

Section 223.9(c) requires that passenger cars, including self-propelled passenger cars built or rebuilt after June 30, 1980, be equipped with FRA certified glazing in all windows. This requirement is intended to reduce the likelihood of injury to passengers and/or employees from breakage and shattering of windows (including windshields).

Justification. NJ Transit requests a waiver of this requirement for windows other than cab windshields because those windows will conform to the side impact requirements of ANSI Z26. 1, Table 1, item 1, ''American National Standard for Safety Glazing Materials for Glazing Motor Vehicles and Motor Vehicle Equipment Operating on Land Highways.'' This glazing is break-resistant in normal usage, but can be broken with a standard rescue tool, such as a pry bar (a pry bar will be located near side windows in each SNJLRT vehicle) in an emergency. Upon breaking, the glass ''crumbles'' into pebble-like pieces, posing no significant hazard to passengers, employees or rescue personnel. The use of such safety glass windows is standard throughout the rail transit industry for (among other applications) in-street light rail operations, where it has proved both durable and safe. In addition, the risk

associated with vandalism (such as by rocks thrown against the windows) is addressed from an operations standpoint in the System Safety Program Plan (SSPP).

Section 223.9(d)—Emergency Exit Window Markings

Section 223.9(d) requires that each emergency window be conspicuously and legibly marked with luminescent material on the inside of each car and that clear and legible operating instructions be posted at or near each such window. This section also requires that each window intended for access by emergency responders for extrication of passengers be marked with a retroreflective, unique and easily recognizable symbol or other clear marking and that clear and understandable window-access instructions be posted at each such window or at the end of each car. These requirements are intended to distinguish emergency windows from other windows and provide information on the operation of the emergency windows.

Justification. NJ Transit requests a waiver from these requirements because all side windows on the SNJLRT vehicles are suitable for use in the event of an emergency and therefore, it would make no sense and could prove to be a confusion hazard to mark any particular side windows as designated ''emergency windows.'' All side windows are made of safety glass and are fitted into the sidewalls by large, specialized rubber sections. All of these windows can be broken with standard rescue tools and can function as emergency windows if necessary. Pry bars, which can be used to break windows if necessary, will be located near side windows inside each SNJLRT vehicle. Instructions meeting FRA requirements and clearly indicating that the pry bar can be used to break any side window will be posted adjacent to each pry bar. Thus, identification of some windows as ''emergency windows'' and the posting of special operating instructions is not appropriate in this instance and is not necessary for safe emergency egress from the SNJLRT vehicle. Enforcing the marking requirements would not serve the intended safety purpose.

Section 223.15(c)—Emergency Window Requirements

Section 223.15(c) requires each passenger train car to be equipped with at least four emergency windows designed to permit rapid and easy removal during an emergency. This requirement is intended to enhance safety by providing emergency egress, in addition to egress through vehicle doorways.

Justification. NJ Transit requests a waiver of this requirement because the SNJLRT vehicles will not be manufactured with designated emergency windows. The vehicles, however, are designed to permit equivalent or superior emergency exit options. Each vehicle has 10 windows on each side, all of which are made of safety glass and are fitted into the sidewalls by large, specialized rubber sections. All of these windows are large (approximately 42 by 36 inches) when compared with conventional commuter rail cars, can be broken with standard rescue tools, and can function as emergency windows if necessary.

Furthermore, the SNJLRT vehicle doorways provide greater access/egress capability than is found on conventional commuter rail cars. Each vehicle has two sets of double doors on each side of the vehicle. The minimum clearance height of each doorway is 76 inches and the flow lane width of each doorway is at least 24 inches (48 inches in total for each set of double doors). The vehicle is designed such that the egress time of an AW2 load shall not exceed 120 seconds, calculating egress by assuring a flow rate of 2 seconds per passenger per flow lane. The doors are releaseable through an emergency release lever located on the inside of each doorway and for at least one doorway per side on the outside of the vehicle. This will enable a closed and interlocked door to be lock-released without power supply. Activation of the emergency release levers shall allow the door leaves to be manually operated. The interior door release levers shall be clearly marked and in a location accessible to all passengers, compliant with American with Disabilities Act (ADA) and FRA marking requirements. These release lever features will enable quick and easy opening of the doors by passengers, equivalent to FRA emergency exit window requirements.

The doorways are designed to provide the main means of emergency access/egress, and because the large windows can function as additional emergency access/egress points, there is very little risk of passengers becoming trapped or rescue personnel being unable to reach passengers. In addition, the SSPP will contain detailed emergency response plan requirements which will include passenger evacuation and crowd control planning.

Section 229.125—Headlights and Auxiliary Lights

Sections 229.125(a) and (d) require locomotives to have headlights of specified candela brightness, and auxiliary lights of specified brightness and placement on the vehicle. The purpose of these requirements is to reduce the risk of collisions attributable to inconspicuity of the train, particularly in low light level situations.

Justification. NJT requests a waiver from these requirements because the SNJLRT vehicles will have lights similar to those required by state law applicable to commercial motor vehicles. The SNJLRT vehicles will be equipped with two headlights on the leading cab of the train capable of illuminating a person 500 feet away. In addition, each vehicle will have an auxiliary light on the front of the car that will form a triangular pattern with the headlights to present a distinctive profile to motor vehicle drivers approaching grade crossings.

The use of lighting similar to motor vehicle lighting is desirable because the SNJLRT vehicle operates in two distinctly different environments. One portion is on mainline railroad track and the other is street-running mixing with highway traffic. NJ Transit believes that while the SNJLRT lighting arrangement will provide for sufficient light to provide safety along the railroad right-of-way, the FRA lighting requirements may not be appropriate for the street-running portions of the route. However, since the front of the vehicle will have headlights and auxiliary lighting to define the end contour of the vehicle, the conspicuity of the train will be assured in both the Shared Trackage and street-running portions of the route and any effect of variations in illumination levels will be minor.

Section 231.14—Passenger Cars Without End Platforms

Section 231.14 specifies the requisite location, number, dimensions, and manner of application of a variety of railroad car safety appliances (e.g., hand brakes, ladders, handholds, steps), directly implementing a number of statutory requirements found in 49 U.S.C. 20301–05.

The statutory provisions contains specific standards for automatic couplers, sill steps, hand brakes, and secure ladders and running boards. Where ladders are required, compliant handholds or grab irons for the roof of the vehicle at the top of each ladder are mandated. Compliant grab irons or handholds also are required for the ends and sides of the vehicles, in addition to standard height drawbars. In addition, the statute requires trains to be equipped with a sufficient number of vehicles with power or train brakes so that the engineer may control the train's speed without the use of a common

hand brake. At least 50 percent of the vehicles in the train must be equipped with power or train brakes, and the engineer must use the power or train brakes on those vehicles and all other vehicles equipped with such brakes that are associated with the equipped vehicles in the train.

Aside from the statutory-based requirements, the regulations provide additional and parallel specifications for hand brakes, sill steps, side handholds, end handholds, end handrails, side-door steps and uncoupling levers. More specifically, each passenger vehicle must be equipped with an efficient hand brake that operates in conjunction with the power brake on the train. The hand brake must be located so that it can be safely operated while the passenger vehicle is in motion. Passenger cars must have four sill steps and side-door steps, and prescribed tread length, dimensions, material, location and attachment devices for sill steps and side-door steps. In addition, there are requirements for the number, composite material, dimensions, location and other characteristics for side and end handholds and end handrails. Finally, this section requires the presence of uncoupling attachments that can be operated by a person standing on the ground. These very detailed regulations are intended to ensure that sufficient safety appliances are available and that they will function safely and securely as intended.

Justification. As noted above, some of the requirements in § 231.14 are required by statute and, therefore, are not subject to waiver under FRA's regulatory waiver provisions. FRA does, however, have the statutory authority to provide exemptions from these statutory requirements pursuant to 49 U.S.C. 20306. Consequently, NJ Transit requests exemption from and/or waiver of these requirements, as appropriate, because the SNJLRT vehicles will be equipped with their own array of safety devices, resulting in equivalent safety.

The SNJLRT vehicle has a number of features that provide an equivalent or superior level of safety as compared to a conventional hand brake. Each SNJLRT vehicle will be equipped with a parking brake located in each of the two control stands in each vehicle.

The brake is capable of holding the vehicle on a gradient of six percent at an AWl (60 tons) load. The SNJLRT vehicles will be operated by a one-person crew. The SNJLRT train will be either one or two vehicles. The train will be operated from the control stand in the lead cab, on trains consisting of two cars, and from the front of the single vehicle in the case of a one vehicle train. During normal operating conditions, the operator will make all service and parking brake applications. In the event of an emergency, the SNJLRT vehicle will have several features which would permit passengers to activate the braking system. First, an emergency release device located on each passenger door pillar causes an irrevocable application of the service brakes in the event of any application. Second, the four doors (two on each side of each vehicle) are interlocked with the propulsion system to ensure that the SNJLRT vehicle does not move while any doors are open, and the opening of the doors while the SNJLRT vehicle is in motion will cause an irrevocable application of the service brake. The braking characteristics of the SNJLRT vehicle will result in a shorter full service brake activation time and easier brake application than would be achieved by the presence of a traditional hand brake. Thus, the safety purpose of the hand brake requirement is achieved, but in a manner that provides an equivalent or superior level of safety.

Sill steps and side-door steps are not necessary for safety on the SNJLRT vehicle, because it is a low floor vehicle designed for level boarding. The door threshold is 22.4 inches above the top of the rail. This configuration of the doors renders sill steps and side-door steps unnecessary. Compliance with the sill step and side-door step requirements would not enhance the safety of the vehicle.

Handholds and handrails are typically intended for use by conductors and crew members performing service and yard duties. However, SNJLRT operations will not involve any service and yard duties from positions outside and adjacent to the vehicle or near vehicle doors. Yard moves will be controlled from the cab stand by the on-board operator and switches will be thrown remotely or through local controls initiated by the on-board operator. Therefore, since there is no need for personnel to mount or dismount the vehicle using external appliances of any kind, there is no need for handholds or handrails on SNJLRT vehicles. NJ Transit has reservations about installing external handholds and handrails because of the street-running characteristics of part of the SNJLRT service.

External handholds or handrails would give pedestrians the opportunity to grab onto something on the outside of the vehicle with the intention to get a ride. This is unsafe and the SNJLRT vehicle will be designed to minimize the opportunity for this practice. In sum, there is no practical need for handholds or handrails, and their presence might constitute a safety hazard in the street-running operating environment.

The SNJLRT vehicle will be equipped with a fully automatic electric coupler controlled from the operator's position in the cab and a mechanical coupler at each end. The coupler and associated draft gear system will have a centering device that retains the unconnected coupler head within its gathering range. The couplers are central buffer couplings with electrical and pneumatic coupling. The operator will initiate uncoupling from the cab stand and no external crew is required to assist in this operation. NJ Transit believes that performing all coupling/uncoupling from inside the vehicle will enhance safety. This elimination of the need for frequent coupling/uncoupling of vehicles, combined with the ability for such activity to take place without crew members in close proximity to the coupler mechanisms, eliminates the need for specially placed uncoupling levers and any hazard associated with manual coupling.

The SNJLRT vehicles will use dynamic brakes. The dynamic brakes will be supplemented by friction brakes and track brakes. NJ Transit will require regular inspections, testing, maintenance and operation of the brake equipment on the SNJLRT vehicle as required by Section 5 of the NJDOT SSPP. Specific operational procedures and inspection testing and maintenance intervals and protocols will be set forth in the SSPP. Therefore, the SNJLRT vehicle brake system will be equivalent to a standard air brake system and thus provide an equivalent level of safety.

NJ Transit is aware that it may obtain exemption from the statutory safety appliance requirements mentioned above only if application of such requirements would ''preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations.'' 49 U.S.C. 20306. The exemption for technological improvements was originally enacted to further the implementation of a specific type of freight car, but the legislative history shows that Congress intended the exemption to be used elsewhere so that ''other types of railroad equipment might similarly benefit.'' S. Rep. 96–614 at 8 (1980), reprinted in 1980 U.S.C.C.A.N. 1156, 1164.

FRA has recognized the potential public benefits of temporally separated transit use on segments of the general railroad system. Light rail transit systems ''promote more livable communities by serving those who live

and work in urban areas without adding congestion to the nation's overcrowded highways.'' Policy Statement at 28238. They ''take advantage of underutilized urban freight rail corridors to provide service that, in the absence of the existing right-of-way, would be prohibitively expensive.'' Id. There have been many technological advances in types of equipment used for passenger rail operations, such as the use of light rail transit vehicles that will be used for the SNJLRT System. Light rail transit equipment is energy-efficient for passenger rail operations because it is lighter than conventional passenger equipment. Light rail vehicles are able to quickly accelerate or decelerate, which makes them more suitable than other equipment types in systems with closely-configured stations.

With regard to the regulatory requirements of § 231.14, as discussed above, the SNJLRT vehicles will be equipped with safety appliances that are more appropriate for light rail transit vehicles, thus achieving an equivalent or superior level of safety in the SNJLRT operating environment.

Section 238.113—Emergency Window Exits

Section 238.113 requires passenger cars to have a minimum of four emergency exit windows, either in a staggered configuration or with one located at each end at each side of the car. Each window must have a minimum unobstructed opening with dimensions of 26 inches horizontally and 24 inches vertically. Each emergency exit window must be easily operable without requiring the use of a tool or other implement. This requirement is intended to provide for sufficient, easily accessible avenues of egress from passenger cars in the case of emergency.

Justification. NJ Transit requests a waiver of this requirement because the SNJLRT vehicles do not come equipped with emergency exit windows. The cars, however, are designed to permit sufficient equivalent egress so that passengers will not become trapped in the cars in the case of emergency.

Section 238.115(b)—Emergency Lighting

Section 238.115(b)(4) requires passenger cars to provide battery-powered emergency lighting with a 90-minute back-up power system capable of operating without a loss of more than 40% minimum illumination levels in all equipment orientations within 450 of the upright and vertical position, and capable of operating after the initial shock of a collision or derailment resulting from prescribed individually applied accelerations. The purpose of these requirements is to ensure that in an emergency situation, sufficient lighting will remain available to aid passengers, crew members, and rescue personnel to access and leave the train safely.

Justification. NJ Transit requests a waiver of these requirements because power for the emergency lighting is provided by a battery with sufficient capacity to sustain emergency loads, including the above lighting, and radio and public address systems, for a period of at least one hour. Additionally, the battery will have sufficient capacity to sustain power to door controls, propulsion and brake controls, coupler control and the horn and bell for a period of at least one hour. The battery is located in the central power unit, removed from the front of the vehicle where direct collisions may occur. The battery is designed for transit use which requires a rugged design capable of withstanding reasonable shock and vibration. The batteries mountings are designed to withstand not less than 5.0 g in the longitudinal direction, 2.0 g in the lateral direction and 3.0 g in the vertical direction.

The SNJLRT vehicles will operate in an urban/suburban region and the route is at-grade, with many points of easy access for emergency rescue units from adjacent streets. In most locations, emergency responders can reach the SNJLRT system within 15 minutes. Even on the most remote section of the system, a three-mile stretch along Duck Island, emergency responders could reach the system within sixty minutes. Additionally, the headway between SNJLRT vehicles is no more than thirty minutes and each vehicle has the capability of acting as a rescue car by coupling with a failed unit and moving it to the next stop for detrainment of passengers. The rescuing car can supply sufficient electrical power to the failed vehicle for the emergency lighting and other functions. In the event that the last scheduled vehicle of the day lost power, the previous vehicle would be returned to recover the failed vehicle.

Section 238.203—Static End Strength

Section 238.203 provides for the overall compressive strength of rail passenger cars, requiring them to have a minimum static end strength of 800,000 pounds on a line of draft at the ends of occupied volumes without permanent deformation of the car body structure. This section is intended to prevent sudden, brittle-type failure of the main structure of a passenger car, thereby providing protection of occupants in the case of a crash.

Justification. NJ Transit requests a waiver from this requirement because the SNJLRT vehicle will be designed to attain a sufficient level of safety in the SNJLRT operating environment. The strict temporal separation of the SNJLRT and Conrail services virtually eliminates the risk of a collision between a SNJLRT vehicle and a Conrail train, obviating the need for SNJLRT equipment to meet conventional railroad car structural standards. Instead, the SNJLRT vehicles are designed to withstand collisions with other light rail vehicles, motor vehicles and similar objects. Relevant aspects of these design standards are described below.

As noted above, the SNJLRT collision avoidance system is at the heart of the SNJLRT safety design. Marked by complementary elements such as operating rules and procedures, train control technology and the SNJLRT signal system, the collision avoidance system will significantly reduce the likelihood of collisions involving SNJLRT vehicles. All signals capable of displaying ''stop'' aspect will incorporate a trip-stop which will initiate a penalty brake application if a SNJLRT vehicle passes a ''stop'' signal aspect. Moreover, the SNJLRT vehicle's rapid deceleration design features will work to further reduce the prospect of collisions and to significantly reduce the closing speed, and accordingly, the seriousness of collisions that do occur.

Above and beyond the crash avoidance features of the SNJLRT System, the SNJLRT vehicles are designed to prevent sudden, brittle-type failure of the main structure of a passenger car. The vehicle design accommodates the actual progression of a failure induced by a sudden collision phenomenon; from the elastic limit, through the plastic limit, to a brittle failure. NJ Transit requires the SNJLRT vehicles to be manufactured to comply with the standards as summarized below:

1. The passenger compartment will be capable of sustaining, without any permanent deformation, at least 1.5 AWO longitudinal loads (approximately 171,000 pounds) applied uniformly at the ends of the passenger compartment, with a uniformly distributed AW4 vertical load (approximately 165,375 pounds).

2. With the vehicle uniformly loaded to AW4, the end sill structure will be capable of: sustaining loads up to the peak collapse load of the crush zone without permanent deformation; sustaining the reaction loads generated from the loads specified for collision posts, corner posts and anti-climbers without permanent deformation; and

distributing the collision loads incurred during scenarios specified for crashworthiness, such that the collapse of the energy absorption elements in the crush zones is the primary failure mode.

3. Vehicles will be capable of withstanding collisions with other SNJLRT vehicles, motor vehicles, or overtravel buffers without unnecessary risk of injury to passengers or excessive damage to SNJLRT cars and/or track equipment. In a collision, no passenger compartment shell will rupture or suffer any opening through which passengers' limbs may protrude; no compartments within the engine compartment will become dislodged and penetrate into the passenger compartment; high voltage devices and associated connecting cables will remain contained and will not create electrical shock hazards to personnel; and electrical and diesel systems will not create a fire hazard.

To achieve the objective of crashworthiness, a crash energy management approach was used as the basis of the SNJLRT vehicle structural design. Further, as it is expected that during peak hours that some passengers will stand, it was deemed important to minimize the deceleration of passengers in the event of a frontal collision. In a collision between a SNJLRT vehicle moving at speed V and a stationary SNJLRT vehicle (i) both consists on level tangent track and unbraked, (ii) couplers fully engaged, (iii) either SNJLRT vehicle either one or two vehicles (i.e. the normal consist for comprising cars normally used in revenue service), and (iv) any SNJLRT vehicle having a weight of AWO (114,600 pounds):

VELOCITY CRASH ENERGY MANAGEMENT

V≤5	No damage to any SNJLRT car or equipment, and the maximum longitudinal acceleration measured in any passenger compartment will not exceed l.0g.
5<V≥15	Damage confirmed to the expendable energy absorption devices and sacrificial structural members at the ends of the SNJLRT cars, which will be repairable. The primary structure enclosing the passenger compartment(s) will remain intact, with no permanent deformation of any of its members. The maximum longitudinal acceleration measured in any passenger compartment will not exceed 2g.

In addition to the above, the SNJLRT cars have an aggressive emergency deceleration rate of an average of 4.5 mph/sec through all entry speeds. In an impending collision scenario this emergency brake rate capability has the potential to reduce speeds prior to impact.

Section 238.205(a)—Anti-climbing Mechanism

Section 238.205(a) requires locomotives (as defined in § 238.5) to have forward and rear end anti-climbing mechanisms capable of resisting an upward or downward vertical force of 200,000 pounds without failure. These requirements are intended to prevent override or telescoping of one passenger train unit into another in the event of high compressive forces-caused by a derailment or collision.

Justification. NJ Transit requests a waiver of this requirement because the SNJLRT vehicle will be designed so that: with only two ribs of the anticlimbing mechanism engaged, and a vertical load of + 40,000 pounds combined with a longitudinal compressive load of AWO applied at the carbody centerline, there will be no permanent deformation of the carbody structure. In addition, crush elements within the couplers are able to absorb a certain amount of energy in recoverable energy absorption elements. When this occurs, the coupler moves back until the anti-climbers of the colliding vehicles touch and the loads are taken by the carbodies directly. Anti-climbers are fitted to the front end of the cars to avoid telescoping.

While individual structural elements will not conform to the requirement of § 238.205(a), the assembled carbody uses ''crush zones'' and other techniques to protect passengers in the event of collisions. Specifically the SNJLRT vehicle is designed using advanced computer methods to incorporate modern energy absorbing and dissipation methods to dissipate energy and transfer loads and protect the passenger compartment. The anti-climbers and energy absorption mechanisms are designed to limit the potential for override and underride and prevent telescoping. The SNJLRT vehicle design will achieve the uniformity of end structure deformation essential to this objective. Moreover, because the strict temporal separation of the SNJLRT and Conrail services virtually eliminates the risk of SNJLRT vehicle/Conrail train collisions, there is no need for the SNJLRT vehicles to meet the more stringent requirements applicable to conventional railroad equipment.

Section 238.207—Link Between Coupling Mechanism and Car Body

Section 238.207 requires the link between the car coupling mechanism and the car body to be designed to resist a vertical downward thrust from the coupler shank of 100,000 pounds for any normal horizontal position of the coupler, without permanent deformation. The purpose of this requirement is to avoid a premature failure of the draft system so that the anticlimbing mechanism will have an opportunity to engage.

Justification. NJ Transit requests a waiver from this requirement because the SNJLRT vehicle has its own design features to accomplish the purpose of the requirement. As noted above, the strict temporal separation of the SNJLRT and Conrail services virtually eliminates the risk of a collision between a SNJLRT vehicle and a Conrail train, obviating the need for SNJLRT equipment to meet conventional railroad car structural standards. Instead, the SNJLRT vehicles are designed to withstand collisions with other light rail vehicles, motor vehicles and similar objects. Relevant aspects of these design standards are described below.

The SNJLRT vehicle will be designed so that the carbody structure supporting the coupler will sustain, without permanent deformation, a load that is equal to 110 percent of the coupler release load (if applicable) or failure load applied at the coupler brackets, with a uniformly distributed AW4 (165,375 pounds) vertical load. In addition, the method of attaching the coupler to the coupler anchor bracket(s) will allow the coupler to become fully released from the coupler anchor bracket(s) once the coupler has absorbed its maximum design energy. The coupler will be contained and prevented from coming in contact with the track or from protruding into the passenger compartment. The coupler and draft gear will withstand an operating consist with an AW3 (154,350 pounds) passenger load, pushing or pulling an unpowered consist with an AW3 passenger load, over all grades and curves on SNJLRT Line, without damage to the coupler.

The intent of the SNJLRT vehicle design is to prevent the coupler shank from contributing to potential damage during a frontal collision. The approach taken is to release the coupler from mechanical connection to the carbody once it has absorbed its maximum design energy. When this occurs the coupler assembly is separated from the coupler anchorage on the car structure. The coupler is retained to prevent it from coming into contact with the track or from protruding into the passenger compartment. This feature is provided to reduce the risk of derailment and penetration of the occupied space.

Section 238.209—Forward-Facing End Structure of Locomotives

Section 238.209 requires the skin of the forward-facing end of each locomotive to be: equivalent to a ½ inch steel plate with a 25,000 pounds per square inch yield strength; designed to inhibit the entry of fluids into the occupied cab area of the locomotive; and affixed to the collision posts or other main vertical structural members so as to add to the strength of the end structure. These requirements are intended to provide protection to persons in the occupied area of the locomotive cab.

Justification. NJ Transit requests a waiver of the requirements in this section because the SNJLRT vehicle will be designed to attain a sufficient level of safety in the SNJLRT operating environment. As noted above, the strict temporal separation of the SNJLRT and Conrail services virtually eliminates the risk of a collision between a SNJLRT vehicle and a Conrail train, obviating the need for SNJLRT equipment to meet conventional railroad car structural standards. Instead, the SNJLRT vehicles are designed to withstand collisions with other light rail vehicles, motor vehicles, and similar objects. Relevant aspects of these design standards are described below.

As noted above, the SNJLRT collision avoidance system is at the heart of the SNJLRT safety design. Marked by complementary elements such as operating rules and procedures, train control technology, and the SNJLRT signal system, the collision avoidance system will significantly reduce the likelihood of collisions involving SNJLRT vehicles. Moreover, the SNJLRT vehicle's rapid deceleration design features have the potential to mitigate the prospect of collisions and to significantly reduce the closing speed, and accordingly, the seriousness of collisions that may occur.

In addition, the SNJLRT system provides improved grade crossing protection for the operator, passenger and vehicle through the use of the crossing warning indicators which alert the operator to the gate function and status. These indicators are comprised of lunar white aspects, visible to the vehicle operator from at least a normal service braking distance from the crossing. A flashing indication shall be given at any time when the gates are operating and between fully down and up positions. When the gates are fully down the indication shall be steady. The operator can respond accordingly if a malfunction is observed.

With respect to the specific design of the forward-facing end structure, the SNJLRT vehicle is similar to a push-pull cab configuration. The operator's cab floor height is 44″ and the vehicle provides 171,000 pounds of buff strength.

Section 238.211—Collision Posts

Section 238.211 requires locomotives to have two full-height collision posts at each end where coupling and uncoupling are expected. Each collision post must have an ultimate longitudinal shear strength of not less than 500,000 pounds at a point even with the top of the underframe member to which it is attached and a longitudinal shear strength of not less than 200,000 pounds exerted at 30 inches above the joint of the post of the underframe. Alternatively, cars may be constructed with an end structure that can withstand the sum of forces that each collision post is required to withstand. This requirement is intended to provide for protection against crushing of occupied areas of passenger cars in the event of a collision or derailment.

Justification. NJ Transit requests a waiver of this requirement because the SNJLRT vehicle will have collision posts, or a structural equivalent, protecting at least the area between the underframe and the bottom of the windshield. NJ Transit believes the SNJLRT vehicle design will provide an adequate measure of safety. The strict temporal separation of the SNJLRT and Conrail services virtually eliminates the risk of a collision between a SNJLRT vehicle and a Contrail train, obviating the need for SNJLRT equipment to meet conventional railroad car structural standards. Instead, the SNJLRT vehicles are designed to withstand collisions with other light rail vehicles, motor vehicles and similar objects. Relevant aspects of these design standards are described below.

As noted above, the SNJLRT collision avoidance system is at the heart of the SNJLRT safety design. Marked by complementary elements such as operating rules and procedures, train control technology, and the SNJLRT signal system, the collision avoidance system will significantly reduce the likelihood of collisions involving SNJLRT vehicles. Moreover, the SNJLRT vehicle's rapid deceleration design features will work to further reduce the prospect of collisions and to significantly reduce the closing speed, and accordingly, the seriousness of collisions that do occur.

In order to preclude sudden catastrophic failure or telescoping of SNJLRT cars, all connections which attach collision posts, corner posts and structural shelf to each other and/or the underframe structure and roof structure, will be made in such a manner to develop the full strength of the load bearing members in shear. The ultimate shear strength of the collision posts will be not less than a compression load of AWO (114,660 lbs) applied at the top of the underframe, and at any angle up to ± 15° from the longitudinal axis. A compression load of 0.5 AWO (57,330 lbs) similarly applied 15 inches above the top of the underframe will cause no yielding of the collision posts. MI underfloor, roof mounted and engine compartment equipment weighing more than 200 pounds will be designed to withstand not less than 5.0 g in the longitudinal direction, 2.0 g in the lateral direction, and 3.0 g in the vertical direction. These loads applied separately will not result in stresses that exceed 90 percent of the yield or buckling strength of the material.

These design requirements provide for the same type of protection of the occupant space as the FRA collision posts requirements, but do so in a way consistent with the design of the SNJLRT vehicle. As noted elsewhere herein, the SNJLRT vehicle is designed using advanced computer methods to incorporate modern energy absorbing and dissipation methods as part of an overall protection system designed to dissipate energy and transfer loads from impacts to protect the passenger compartment. As part of this system, the SNJLRT collision posts provide protection for the occupied volume of the vehicle shell during a collision. Thus, the SNJLRT vehicle effectively isolates passengers and crew from the hazards of penetration.

NJ Transit also notes that a portion of the SNJLRT system alignment consists of street running. To operate safely in this environment the operator requires good visibility to monitor road and pedestrian traffic around the vehicle. Conventional collision post designs may result in visual obstructions for the operator. This improved visibility is

also beneficial when operating on the mainline railroad portion of the route.

Section 238.213—Corner Posts

Section 238.213 requires two full-height corner posts at the end of each vehicle capable of resisting, without failure, a load of 150,000 pounds at the point of attachment to the underframe and a load of 20,000 pounds at the point of attachment to the roof structure. Each corner post must be able to resist a horizontal load of 30,000 pounds applied 18 inches above the top of the floor without permanent deformation. These requirements serve to provide protection to occupant compartments from side-swipe type collisions.

Justification. NJ Transit requests a waiver of this requirement because the SNJLRT vehicle will be designed to attain a sufficient level of safety in the SNJLRT operating environment. As noted above, the strict temporal separation of the SNJLRT and Conrail services virtually eliminates the risk of a collision between a SNJLRT vehicle and a Contrail train, obviating the need for SNJLRT equipment to meet conventional railroad car structural standards. Instead, the SNJLRT vehicles are designed to withstand collisions with other light rail vehicles, motor vehicles, and similar objects. Relevant aspects of these design standards are described below.

As noted above, the SNJLRT collision avoidance system is at the heart of the SNJLRT safety design. Marked by complementary elements such as operating rules and procedures, train control technology and the SNJLRT signal system, the collision avoidance system will significantly reduce the likelihood of collisions involving SNJLRT vehicles. Moreover, the SNJLRT vehicle's rapid deceleration design features will work to further reduce the prospect of collisions and to significantly reduce the closing speed, and accordingly, the seriousness of collisions that do occur.

The SNJLRT vehicle corner posts will have an ultimate shear strength not less than a compression load of 0.5 AWO (57,330 lbs) applied at the top of the underframe; compression load of 0.3 AWO (3,500 lbs) applied 15 inches above the top of the underframe, or at the level of the structural shelf (whichever is higher), and which when applied in any direction, will cause no yielding of the corner posts. Also, any underfloor, roof mounted, and engine compartment equipment weighing more than 200 pounds will be designed to withstand not less than 5.0 g in the longitudinal direction, 2.0 g in the lateral direction, and 3.0 g in the vertical direction, and when these loads are applied separately they will not result in stresses that exceed 90 percent of the yield or buckling strength of the material.

Here too, while individual structural elements of the SNJLRT vehicle may not conform to the specific requirements, the assembled carbody uses ''crush zones'' and other energy absorption and dissipation techniques to protect passengers in the event of collisions. As part of this system, the corner posts extend from the underframe to the roof structure and may be combined with the collision posts and underframe to become part of the end structure. This design effectively isolates passengers and crew from the hazards of penetration, thereby providing protection for the occupied volume of the vehicle shell during a collision.

As noted above, a portion of the SNJLRT system alignment is in streets. To operate safely in this environment, the vehicle operator requires good visibility to monitor road and pedestrian traffic around the vehicle. Conventional corner post designs might result in visual obstructions for the operator. The superior visibility of the SNJLRT vehicle is also beneficial when operating on the railroad corridor portion of the route.

Section 238.215—Rollover Strength

Section 238.215 sets forth the structural requirements intended to prevent significant deformation of the occupant compartments of passenger cars, in the event the car rolls onto its side or roof. Under this section, a passenger car must be able to support twice the dead weight of the vehicle while the vehicle is resting on its roof or side.

Justification. NJ Transit requests a waiver of this requirement because the SNJLRT is designed such that the roof will have sufficient strength to support, without permanent deformation, concentrated loads of 250 pounds per person as applied by a person walking on the roof, with a maximum of three persons there at any given time. As noted above, the underfloor, roof mounted and engine compartment equipment weighing greater than 200 pounds will be designed to withstand not less than 5.0 g in the longitudinal direction, 2.0 g in the lateral direction, and 3.0 g in the vertical direction and, when these loads are applied separately, they will not result in stresses that exceed 90 percent of the yield or buckling strength of the material. With a compression load of 40,000 pounds applied to the side wall at the side sill, and distributed along 8 feet, and a compression load of 10,000 pounds applied to the side wall at the belt rail, there will be no yielding or buckling of the carbody structure.

The features specified above are designed to enhance crashworthiness and protect the occupied volume. The SNJLRT vehicle incorporates a lightweight low floor design, which lowers the center of gravity as well as the load conditions in rollover circumstances. The lower center of gravity makes the SNJLRT vehicle less prone to rollover than a standard commuter rail car. Moreover, in the unlikely event of a rollover, the lighter weight of the SNJLRT car means that the roof does not have to support as much weight as would a standard commuter rail car. In addition, the bulk of the equipment, including the propulsion system and powered truck, is located in the articulated center segment of the vehicle and poses no direct hazard to passengers in the event of a rollover.

In the unlikely event that a derailment leading to a rollover occurs, the SNJLRT vehicle specifications provide for structural protection of the occupant compartments and, in conjunction with the other safety design features of the vehicles, will provide an equivalent measure of safety.

Section 238.217—Side Structure

Section 238.217 sets strength requirements for side posts and corner braces. This section also requires that outside sheathing of mild, open-hearth steel, when used flat and without reinforcement in certain side frames, be no less than ⅛-inch nominal thickness. When sheathing used for truss construction serves no load-carrying function, the minimum thickness is 40 percent of ⅛-inch nominal thickness. These specifications are intended to provide for additional structural protection, so that a car will derail before it collapses into the occupant compartments.

Justification. NJ Transit requests a waiver of these requirements because the SNJLRT vehicle is designed so that with a compression load of 40,000 pounds applied to the side wall at the side sill, and distributed along 8 feet, and a compression load of 10,000 pounds applied to the side wall at the belt rail, there will be no yielding or buckling of the carbody structure. The approach used in designing the SNJLRT aluminum carbody vehicle involved minimizing weight while providing maximum protection for passengers, consistent with the service requirements. The floor level and design of the SNJLRT vehicle likely will prove superior to the typical low floor light rail vehicle in side impact collisions at

grade crossings. The low floor portion of the car is 22″ above top of rail, which is higher than a typical low floor vehicle. This affords better protection for the rail passenger should a highway vehicle strike it. The vehicle also has a well-lit interior and external indicator and marker lights, and will therefore be more conspicuous than a regular commuter or freight train.

Additionally, the relatively short train length [typically 102.5 feet (one car), with a maximum of 205 feet (two cars)] ensures that the vehicle will not obstruct a grade crossing for an extended time period. This, in conjunction with constant warning time crossing protection, will encourage observation of grade crossing warnings.

Section 238.221—Glazing

Section 238.221 reiterates the safety glazing standards of 49 CFR part 223 and establishes standards for glazing securement components. The new requirements for glazing securement are designed to ensure that the glazing frame be capable of holding the glazing in place against all forces which it is required to resist under part 223, and forces created by air pressure differences caused when two trains pass at their authorized maximum speeds in opposite directions at the minimum track separation for two adjacent tracks. Glazing forced from the window opening is a potential hazard. Proper securement of glazing assists in retaining persons within the vehicle in the event of a collision or derailment.

Justification. SNJLRT vehicles will meet the window securement requirements so no waiver is sought relative to that requirement. NJ Transit has already stated a basis for a waiver request for the remaining provisions as noted under part 223.

Section 238.223—Fuel Tanks

This section provides for the structural requirements applicable to external and internal fuel tanks. External fuel tanks must comply with Association of American Railroads (AAR) recommended practice 506, Performance Requirements for Diesel Electric Locomotive Fuel Tanks, or an industry standard providing at least equivalent safety. Internal fuel tanks must be positioned to reduce the likelihood of accidental penetration from roadway debris or collision. The vent system and spill protection systems must be designed to prevent them from becoming a path for fuel loss for any tank orientation due to a locomotive overturning. The bulkheads and skin must have a minimum steel plate ⅜ of an inch thick with a 25,000 pound yield strength, or be made with a material with an equivalent strength. These requirements are designed to keep the fuel tank from being punctured and from being a conduit for fuel spillage if a locomotive tips over.

Justification. NJ Transit requests a waiver of these requirements because the SNJLRT vehicle will have an internal fuel tank and filler pipes that will be protected from the passenger compartment by fire barrier material, and which will be properly insulated to prevent fire danger. The fuel tank will be constructed and located in a manner that will permit filling and draining from the outside of the vehicle only. Filler pipes will be equipped to complement filler hoses fitted with dry-break mechanical interlocks. The SNJLRT vehicle will be equipped with a safety cut-off device directly on the fuel line to the diesel engine which meets the requirements stated within the FRA locomotive safety standards, 49 CFR 229.93, Internal Combustion Equipment, Safety Cut-off Device. The fuel tanks, engine and propulsion equipment are located in the drive unit positioned in the center of the articulated vehicle. The main fuel tank is located above the floor, and two additional fuel tanks are located within the side frame under the floor. The fuel tank was designed in accordance with UC Standard 627, and will comply with the requirements of FHWA motor carrier safety standards for fuel systems, 49 CFR 393.67. Refueling is done without pressure and there are level sensors to protect against overspilling.

The fuel tank design ensures that the passenger compartment is isolated from the fuel tanks and engine. The central placement of the drive unit provides significant protection for fuel storage and piping system. The fuel tanks are located above the floor line or between the side frame rails. The drive unit structure protects fuel storage and piping.

During a derailment the carbody structure is more likely to come into contact with the rails than the fuel tanks. Therefore it is unnecessary to supply the heavy bulkhead ends required by the AAR recommended practice 506. In addition, as part of the final design process, the SNJLRT Contractor will complete a full safety review of the fuel tanks and systems to demonstrate that the design is safe and meets appropriate sections of FHWA motor carrier fuel tank standards set forth at 49 CFR part 393. This design meets FRA safety objectives, but in a manner more appropriate to the SNJLRT vehicle and its operation.

Section 238.233—Interior Fittings and Surfaces

Section 238.233 requires each seat in a passenger car to be securely fastened to the carbody so as to withstand individually applied acceleration of 4g acting in the vertical and in the lateral direction on the deadweight of the seat (or seats if a tandem unit). Seat attachments must have an ultimate strength capable of resisting a longitudinal inertial force of 8g acting on the mass of the seat plus the impact force of the mass of an unrestrained 95th percentile male occupant striking the seat from behind when the floor to which the seat is attached decelerates with a triangular crash pulse having a peak of 8g and a duration of 250 milliseconds. This section also requires overhead racks to provide longitudinal and lateral restraint for stowed articles and be attached to the car body with sufficient strength to resist loads due to a longitudinal force of 8g, a vertical force of 4g and a lateral force of 4g. Other interior fittings must meet the same strength requirements. In addition, to the extent possible, all interior fittings in the passenger car are to be recessed or flush-mounted, and sharp edges and corners in the locomotive cab or passenger car will be either avoided or padded. Floor mounted seats provided for a crew member assigned to occupy the cab of a locomotive must be capable of withstanding the same load limits as required for overhead storage racks, with the mass being that of the seat and a 95th-percentile male crew member. These requirements are designed to reduce the likelihood and severity of injury to train occupants caused by the dislodging of seats or other interior items, or by occupants striking interior items in the event of an accident.

Justification. NJ Transit requests a waiver of these requirements because the seats and interior fittings of the vehicle have been designed for the SNJLRT operating environment. The vehicle is designed such that the passenger seat will consist of a cantilevered supporting structure, shell and cushion inserts for the seat and back. The vehicle seats are cantilevered from the side of the car, which permits placement of luggage beneath the seats. Aspects of this regulation are more appropriate to an intercity vehicle where luggage accompanies most passengers. This vehicle is used in local service where luggage is typically limited to small carry-on items such as purses, attache cases, etc. There is adequate space beneath the cantilevered seats to permit stowage of larger pieces

of luggage, which limits the use of the overhead racks.

The vehicle interior will provide recess or flush-mounted fittings, and readily accessible stanchions and grab rails for passenger safety and comfort. Stanchions and grab rails will be sized and located to provide optimum arrangement for all passengers. They will be of a color distinguishable by the partially sighted. Windscreens will be provided adjacent to each doorway, with at least the upper half transparent, and will incorporate a stanchion extending from the windscreen to the SNJLRT car ceiling. This vehicle also provides more floor space for passenger circulation than an intercity or commuter rail car due to its service characteristics.

It is also important to note that the proposed seat attachment strength requirements are a function of the proposed 800,000 pound compression strength requirement. Because the SNJLRT vehicles, however, have different compression strength values, it is not necessary for the SNJLRT car to meet the proposed 8g/4g force resistance requirements. In the SNJLRT vehicles, the provision of crashworthiness features will prevent acceleration in the passenger compartment from reaching such levels. Rather, the limit for collisions up to 15 mph is 2g. Moreover, the high emergency brake rate will mean that most collisions will be at a lower speed than would be the case with conventional commuter rail cars.

Section 238.235—Doors

Section 238.235 provides that each passenger must have a minimum of two exterior side doors, with each door providing a minimum clear opening of 30 inches horizontally and 74 inches vertically. This section also provides for the availability of override devices enabling the opening of doors without power from both the inside and outside of the cars without the use of a tool or other implements.

Justification. NJ Transit requests a waiver of these requirements because the SNJLRT vehicle is designed with an emergency release lever on the inside of each doorway and for at least one doorway per side on the outside of the vehicle. This will enable a closed and interlocked door to be lock-released without power supply. Activation of the emergency release levers will allow the door levers to be manually moved. The interior emergency door release levers will be clearly marked and will be in a location accessible to all passengers, consistent with ADA requirements.

The SNJLRT vehicle will have doorways on both sides to permit egress time of an AW2 load in less than 120 seconds. The passenger doorways are two-panel sliding plug type and flush with carbody in the closed position. They are opened and closed pneumatically and provide direct access from the platform to the car interior. There is no vestibule with secondary door access through a partition to the passenger compartment. The clear opening is 52.38 inches. The car has two doors per side in the low floor area. This door configuration permits evacuation of an AW2 (67 Tons—180 Passengers) car from either side in 100 seconds. Also, with regard to access, all windows can be safely shattered to provide additional access/egress locations.

Section 238.237—Automated Monitoring

Section 238.237 requires that controlling locomotives have working alerters. The alerter timing must be set by the operating railroad taking into consideration maximum train speed and signal system capabilities. Under this section, the working alerter must initiate a penalty brake application if the train operator does not respond to the alerter. If the alerter fails en route a second qualified person will be stationed in the cab or the operator will be in constant communication with a second crew member until the train reaches the next terminal. These requirements are intended to prevent a train collision or derailment due to the inattention or incapacity of the train operator, that would result in loss of control of the train.

Justification. NJ Transit requests a waiver from these requirements because the SNJLRT vehicle is equipped with its own controller and audible alerter features to provide an equivalent level of safety. If a vehicle operator fails to respond to an alerter approximately every 30 seconds, the vehicle goes into an immediate penalty brake application. A keyed control switch will be provided, which is interlocked such that only the master controller at the front end of the lead SNJLRT car of a consist is operable. The braking demand of the master controller and braking handle always has priority over the motoring demand. The drive control unit controls and supervises the protective functions of the propulsion converter.

In addition to the master controller, redundant safety systems are provided. For example, the vehicle is also controlled by enforce-stop devices which initiate a brake application if the vehicle fails to respond to signal commands. Also, an emergency stop push-button will be provided such that, when pushed, it will activate the emergency brakes. It will be possible to activate the emergency stop push-button from any console in a consist. Finally, the SNJLRT service route involves frequent station stops in signaled territory under control of a dispatcher.

Section 238.301—Inspection, Testing and Maintenance

Subpart D of part 238, §§ 238.301 through 238.319, contains requirements pertaining to the inspection, testing, and maintenance of the passenger equipment and systems required for Tier 1 passenger equipment. These requirements are designed to ensure that passenger rail operations are conducted only on vehicles whose components and systems are in good working order, thereby reducing both the chances of an equipment-related accident and the severity of damage or injury in the case of an accident.

NJ Transit anticipates being in compliance with the requirements of subpart D. However, NJ Transit requests a waiver of any requirements that correlate to the subpart B or C standards from which NJ Transit has sought waivers to depart. SNJLRT equipment will be subject to a detailed program of inspection, testing and maintenance, as required by the NJDOT SSPS and the SNJLRT SSPP. Specifically, § 5.1.5. of the NJDOT SSPS requires the SSPP to provide for periodic and as needed maintenance, inspection, and testing of equipment and facilities, as well as training and certification of employees in safety-sensitive positions. The SNJLRT SSPP will address these issues in detail, setting forth specific inspection maintenance and testing schedules and protocols for all major equipment, components, and systems.

Part 239—FRA Requirement and Purpose

Part 239 contains standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains. It is intended that by providing sufficient emergency egress capability and information to passengers and by having emergency preparedness plans calling for coordination with local emergency response officials, the risk of death or injury to passengers, employees and others in the case of accidents or other incidents, will be lessened. This rule was adopted as a result of several serious crashes involving commuter trains.

Justification. NJ Transit requests a waiver of this requirement because the SNJLRT system will be operated in accordance with the emergency

preparedness specifications of the SNJLRT SSPP, under the oversight of the NJDOT's State Safety Oversight Program. The SSPP sets forth procedures and requirements dealing with emergency situations tailored to the SNJLRT system, but which also draw on the experience of emergency preparedness standards from other rail transit systems whose operations and equipment more closely resemble the SNJLRT system than FRA-regulated commuter rail systems. Section 5.1.4.1 of the NJDOT SSPS requires NJ Transit to adopt an emergency response plan and procedures which must include a means to communicate and coordinate with external emergency response agencies, and provide for emergency simulations and drills, and training. Section 9 of the SSPS, Security, requires the SSPP to contain Emergency Operating Procedures to deal with a variety of emergency situations, including accidents, natural disasters, and sabotage or other criminal activities. The SNJLRT SSPP will contain a detailed emergency response plan which will provide for contingency planning for passenger evacuation and crowd control coordination and training and simulation drilling with outside emergency response providers. The emergency response plan will also specify required emergency equipment.

In addition to emergency response planning required by §§ 5 and 9 of the SSPS, the SSPS requires NJ Transit to engage in a process by which hazards occurring in operations, maintenance, and engineering are identified and categorized according to severity and likelihood. Resolutions to reduce hazards to the lowest level practicable must then be considered. See SSPS, § 7, Exhibit C. This process will help the SNJLRT contractor to develop the emergency response plan, including the design, in advance, of processes for handling exceptions to established procedures where situations require them. A hazard resolution matrix will be included in the SSPP.

In addition, the Safety Committee will address emergency preparedness issues and provide coordination between NJ Transit, the SNJLRT Contractor, Conrail and local emergency response agencies. The NJDOT, as part of its oversight activities, will be responsible for investigation of accidents and other emergency situations.

These emergency preparedness standards will provide a level of safety equivalent to the FRA requirements in a manner more appropriate to the SNJLRT operating environment.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with either the request for a waiver of certain regulatory provisions or the request for an exemption of certain statutory provisions. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA 1999–5987) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza level) 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, D.C. on August 10, 1999.

Michael Logue,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 99–21777 Filed 8–20–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before September 22, 1999.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW, Washington, DC 20590 or at http://dms.dot.gov.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on August 17, 1999.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12316–N	RSPA–1999–6014	The Dow Chemical Co., Channahon, IL.	49 CFR 177.834(i)(3)	To extend the 25 feet attendance requirement for loading of cargo tanks containing various classes of hazardous materials. (mode 1)
12317–N	RSPA–1999–6016	Archimica, Gainesville, FL	49 CFR 173.243(c)	To authorize the transportation in commerce of Class 3 material in DOT–57 portable tanks not presently authorized. (modes 1, 3)
12319–N	RSPA–1999–6015	BFI, Atlanta, GA	49 CFR 178.503(a)(9)(ii)	To authorize the transportation in commerce of 1H2 containers that have not been properly marked and labelled for reuse in transporting regulated medical waste. (mode 1)
12324–N	RSPA–1999–6051	STC Technologies, Inc., Bethelem, PA.	49 CFR 171.11(d)(14), 171.12(b)(17), 173.301(e) & (f), 173.304(a)(1) & (a)(3).	To authorize the one-time transportation in commerce of a specially designed device containing small quantities of Division 2.1 gases. (modes 1, 2, 3, 4)
12325–N	RSPA–1999–6099	Lifeline Technologies, Inc., Sharon Hill, PA.	49 CFR 174.67	To authorize an alternative monitoring system during unloading of various hazardous materials without the physical presence of an unloader. (mode 2)
12327–N	RSPA–1999–6100	International Federation of Inspection Agencies, Houston, TX.	49 CFR 176.3(a)(1)(i), 176.3(b)(4).	To authorize the transportation in commerce of Packing Group 1 material in non-bulk glass containers. (mode 1)

[FR Doc. 99–21787 Filed 8–20–99; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before September 7, 1999.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington, DC or at http://dms.dot.gov.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on August 17, 1999.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
7277–M		Structural Composites Industries Pomona, CA.[1]	7277
9649–M		Department of Defense (MTMC) Falls Church, VA.[2]	9649
10180–M		Fireboy-Xintex Grand Rapids, MI.[3]	10180
10672–M		Burlington Packaging, Inc. Brooklyn, NY.[4]	10672
10945–M		Structural Composites Industries Pomona, CA.[5]	10945
11215–M		Orbital Sciences Corporation Dulles, VA.[6]	11215
11436–M		B&R Specialties, Inc. Staatsburg, NY.[7]	11436
11827–M		NRS America, Inc. White Plains, NY.[8]	11827
11856–M	RSPA–1997–2530	Olin Corporation/Motorola Corporation Norwalk, CT/Chandler, AZ.[9]	11856
11942–M	RSPA–1997–2898	Niklor Chemical Company Long Beach, CA.[10]	11942
11990–M	RSPA–1997–3098	Taylor-Wharton Coyne Huntsville, AL.[11]	11990
12310–M	RSPA–1999–5961	Five Star Waste, Inc. Lake Worth, FL.[12]	12310

[1] To modify the exemption to authorize cargo vessel as an additional mode of transportation for the transportation of Division 2.1 materials in non-DOT specification fiber reinforced plastic composite cylinders.

[2] To modify the exemption to include Competent Authority Approval language for international shipping purposes of limited quantity Class 7 materials.

[3] To modify the exemption to authorize an additional Division 2.2 material in DOT Specification 39 cylinders.

[4] To modify the exemption to allow for polyethylene bottles, not exceeding 32 ounces in capacity, in multiple or individual containers for shipment of liquid and solid hazardous materials.

[5] To modify the exemption to authorize cargo vessel as an additional mode of transportation for the transportation of Division 2.1 materials in non-DOT specification fiber reinforced plastic full composite cylinders.

[6] To modify the exemption to include new operations origination points and flight path changes for the transportation of certain hazardous materials contained in a rocket configuration secured beneath a L–1011 aircraft.

[7] To modify the exemption to authorize less than 3 mil. red bags so long as it meet tear-resistance and impact resistance tests for use in the transportation of regulated medical waste.

[8] To modify the exemption to add Intermediate Bulk Containers (IBCs) as authorized packaging for the transportation of various classes of hazardous materials.

[9] To modify the exemption to allow for the addition of a satellite launch ''separation system'' device classed as Division 1.4C.

[10] To modify the exemption to authorize an additional Division 6.1, Hazard Zone B liquid PIH material in DOT specification 4BW cylinders.

[11] To modify the exemption to allow for design changes of non-DOT specification cylinders for the transportation of certain Division 2.1, 2.2 and Class 3 materials.

[12] To reissue the exemption originally issued on an emergency basis for the transportation of regulated medical waste in non-DOT specification containers.

[FR Doc. 99–21788 Filed 8–20–99; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 16, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before September 22, 1999 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0156.

Form Number: ATF F 2987 (5210.8).

Type of Review: Extension.

Title: Computation of Tax and Agreement to Pay Tax on Puerto Rican Cigars or Cigarettes.

Description: ATF F 5210.8 is used to calculate the tax due on cigars and cigarettes manufactured in Puerto Rico and shipped to the United States. The form identifies the taxpayer, cigars or cigarettes by tax class a certification by a U.S. Customs official as to the amount of shipment, and that the shipment has been released to the United States.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 30.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 150 hours.

OMB Number: 1512–0167.

Form Number: ATF F 3072 (5210.14).

Type of Review: Extension.

Title: Transportation in Bond and Notice of Puerto Rican Tobacco Products, Cigarette Papers and Tubes.

Description: ATF F 3072 (5210.14) is used to document the shipment of taxable products brought into the United States in bond from Puerto Rico. The form documents certification by ATF to account for the tax liability as well as any adjustments assessed to the bonded licensee. The form also describes the shipment and identification of licensee who receives the products.

Respondent: Business or other for-profit.

Estimated Number of Respondents: 50.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 200 hours.

OMB Number: 1512–0199.

Form Number: ATF F 5110.30.

Type of Review: Extension.

Title: Drawback on Distilled Spirits Exported.

Description: ATF F 5110.30 is used by persons who export distilled spirits and wish to claim a drawback of taxes already paid in the United States (US). The form describes the claimant, spirits for tax purposes, amount of tax to be refunded, and a certification by the U.S. Government agent attesting to exportation.

Respondent: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 10,000 hours.

OMB Number: 1512–0214.

Form Number: ATF F 5110.74.

Type of Review: Extension.

Title: Application and Permit Under U.S.C. 5181—Alcohol Fuel Producer.

Description: This form is used by persons who wish to produce and receive spirits for the production of alcohol fuels as a business or for their own use and for State and local registration where required. The form describes the person(s) applying for the permit, location of the proposed operation, type of material used for production and amount of spirits to be produced.

Respondent: Business or other for-profit.

Estimated Number of Respondents: 734.

Estimated Burden Hours Per Respondent: 1 hour, 48 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,321 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW, Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–21764 Filed 8–20–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–9: OTS Nos. H–3478 and 14953]

IGA Federal Savings, Feasterville, Pennsylvania; Approval of Conversion Application

Notice is hereby given that on August 12, 1998, the Director, Office of Examination & Supervision, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of IGA Federal Savings, Feasterville, Pennsylvania, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: August 12, 1999.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 99–21839 Filed 8–20–99; 8:45 am]

BILLING CODE 6720–01–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported For Exhibition Determinations

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit ''Adriaen de Vries, Imperial Sculptor'' imported from abroad for temporary exhibition without profit within the United States, is of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the listed exhibit objects at The J. Paul Getty Museum, Los Angeles, California, from on or about October 12, 1999 to on or about January 9, 2000, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Jacqueline H. Caldwell, Assistant General Counsel, 202/619–6982, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547–0001.

Dated: August 18, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–21791 Filed 8–20–99; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 64, No. 162

Monday, August 23, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. 91N–0281]

RIN 0910–AZ17

General and Plastic Surgery Devices; Effective Date of Requirement for Premarket Approval of the Silicone Inflatable Breast Prosthesis

Correction

In rule document 99–21508, beginning on page 45155, in the issue of Thursday, August 19, 1999, make the following correction:

On page 45156, in the first column, in the **EFFECTIVE DATE:** section, ''August 18, 1999'' should read ''August 19, 1999''.

[FR Doc. C9–21508 Filed 8–20–99; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday
August 23, 1999

Part II

Environmental Protection Agency

40 CFR Part 130

Proposed Revisions to the Water Quality Planning and Management Regulation; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 130

[FRL–6424–2]

RIN 2040–AD36

Proposed Revisions to the Water Quality Planning and Management Regulation

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Today's action revises, clarifies and strengthens the Environmental Protection Agency's (EPA) current regulatory requirements for establishing Total Maximum Daily Loads (TMDLs) under the Clean Water Act (CWA). Today's proposed rule will provide States, Territories and authorized Tribes with the necessary information to identify impaired waters and to establish TMDLs to restore water quality. Today's proposed rule clarifies and strengthens how TMDLs are established so they can more effectively contribute to improving the nation's water quality. Through this proposal, State, Territorial and authorized Tribes can tailor their water quality programs to address the characteristics, problems, risks, and implementation tools available in individual watersheds, with meaningful involvement of stakeholders in the local community. Also in today's **Federal Register**, EPA is proposing a companion rule amending NPDES and water quality standards regulations to better support establishment of TMDLs.

DATES: Comments on this proposal must be submitted on or before October 22, 1999. Comments provided electronically will be considered timely if they are submitted by 11:59 P.M. (Eastern time) October 22, 1999.

ADDRESSES: Send written comments on the proposed rule to the Comment Clerk for the TMDL Program Rule, Water Docket (W–98–31), Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460.

For information on Filing comments, see ''Additional Comment Information'' in **SUPPLEMENTARY INFORMATION**.

A copy of the supporting documents cited in this proposal is available for review at EPA's Water Docket; Room EB–57 (East Tower Basement), 401 M Street, SW, Washington, DC 20460. For access to docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m. for an appointment. An electronic version of this proposal will be available via the Internet at: <http://www.epa.gov/OWOW/tmdl/index.html>.

FOR FURTHER INFORMATION CONTACT: Hazel Groman, U.S. EPA, Office of Wetlands, Oceans and Watersheds (4503F), 401 M St., S.W., Washington, D.C. 20640, (202) 401–4078.

SUPPLEMENTARY INFORMATION:

Authority: Clean Water Act Sections 106, 205(g), 205(j), 208, 303, and 305.

Additional Comment Information

EPA requests that commenters submit any references cited in their comments. EPA also requests that commenters submit an original and 3 copies of their written comments and enclosures. Commenters that want receipt of their comments acknowledged should include a self-addressed, stamped envelope. All comments must be postmarked or delivered by hand. No facsimiles (faxes) will be accepted.

EPA will also accept comments electronically. Comments should be addressed to the following Internet address: ow-docket@epa.gov. Electronic comments must be submitted as an ASCII or WordPerfect file avoiding the use of special characters and any form on encryption. Electronic comments must be identified by the docket number W–98–31, and may be filed online at many Federal depository Libraries. No confidential business information (CBI) should be sent via e-mail.

ENTITIES POTENTIALLY REGULATED BY THE PROPOSED RULE

Category	NAICS Codes	SIC Codes	Examples of potentially regulated entities
State, Local, Tribal Government	N/A	N/A	States, Territories, and authorized Tribes.
Federal Government	N/A	N/A	EPA.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility, company, business organization, etc., is regulated by this action, you should carefully examine the applicability criteria in § 130.20 of the proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

A. Background

1. What Are the Current Statutory and Regulatory Requirements for Identifying Waterbodies That Require TMDLs and Establishing TMDLs?

The CWA includes a number of programs aimed at restoring and maintaining water quality. These include national technology-based effluent limitation guidelines; national water quality criteria guidance; State, Territorial and authorized Tribal water quality standards; State, Territorial and authorized Tribal nonpoint source management programs; funding provisions for municipal wastewater treatment facilities; State, Territorial and authorized Tribal water quality monitoring programs; and the National Pollutant Discharge Elimination System (NPDES) permit program for point sources. These programs have produced significant and widespread improvements in water quality over the last quarter-century, but many waterbodies remain impaired by one or more pollutants. For example, the National Water Quality Inventory Report to Congress for 1996 indicates that of the 19 percent of the Nation's rivers and streams that have been assessed, 35 percent of these do not fully support water quality standards or uses and 8 percent of these are threatened. Of the 72 percent of estuary waters assessed, 38 percent are not fully supporting water quality standards or uses and 4 percent are threatened. Of the 40 percent of lakes, ponds, and reservoirs assessed (not including the Great Lakes), 39 percent are not fully supporting water quality standards or uses and 10 percent are threatened.

The goal of establishing TMDLs is to assure that water quality standards are attained and maintained. Section 303(d) of the CWA requires States, Territories and authorized Tribes to identify and establish a priority ranking for waters

for which existing pollution controls are not stringent enough to attain and maintain State, Territorial and authorized Tribal water quality standards, establish TMDLs for those waters, and submit, from time to time, the list of waters and TMDLs to EPA. Section 303(d) requires EPA to review and approve or disapprove lists and TMDLs within 30 days of the time they are submitted. If EPA disapproves a list or a TMDL, EPA must establish the list or TMDL for the State, Territory or authorized Tribe.

EPA issued regulations governing identification of impaired waters and establishment of TMDLs, at 40 CFR 130.7, in 1985 and revised them in 1992. The current regulations provide that:

- State, Territorial and authorized Tribal lists must include those waters for which more stringent effluent limitations or other pollution controls (e.g., best management practices) required by local, State, or Federal authority are not stringent enough to attain and maintain applicable water quality standards;
- State, Territorial and authorized Tribal lists must be submitted to EPA every two years, on April 1 of every even-numbered year;
- The priority ranking for listed waters must include an identification of the pollutant or pollutants causing or expected to cause the impairment and an identification of the waterbodies targeted for TMDL development in the next two years;
- States, Territories and authorized Tribes, in developing lists, must assemble and evaluate all existing and readily available water quality-related data and information;
- States, Territories and authorized Tribes must submit, with each list, the methodology used to develop the list and provide EPA with a rationale for any decision not to use any existing and readily available water quality-related data and information; and
- TMDLs must be established at levels necessary to implement applicable water quality standards with seasonal variations and a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.

Existing regulations define a TMDL as a quantitative assessment of a water quality problem. The TMDL specifies the amount of a particular pollutant that may be present in a waterbody, allocates allowable pollutant loads among sources, and provides the basis for attaining or maintaining water quality standards. TMDLs are established for waterbody and pollutant combinations for waterbodies impaired by point sources, nonpoint sources, or a combination of both point and nonpoint sources.

Indian Tribes may be authorized to establish TMDLs for waterbodies within their jurisdiction. To date, however, no Tribe has sought or received CWA authority to establish TMDLs.

2. What Was the TMDL Federal Advisory Committee Act (FACA) Committee and What Did It Do?

In November 1996, EPA established a Federal Advisory Committee Act Committee (FACA Committee) to provide recommendations on improving regulations and guidance for identifying impaired waterbodies and establishing TMDLs. EPA charged the FACA Committee, a subgroup of the National Advisory Council for Environmental Policy and Technology, with recommending ways to improve the effectiveness and efficiency of State, Territorial, Tribal and EPA efforts to identify waterbodies for which TMDLs must be established and the way in which TMDLs are established. EPA asked the FACA Committee to provide advice on new policy and regulatory directions for TMDLs, including their role in watershed protection, the identification of impaired and threatened waterbodies, the pace of TMDL establishment, the science and tools needed to support the establishment of TMDLs and the roles and responsibilities of States, Territories, Tribes and EPA in establishing TMDLs.

The 20 FACA Committee members were a geographically balanced and highly motivated group of individuals with diverse interests in, knowledge of, and broad perspectives on TMDLs. Members included State and local officials, a Tribal consortium representative, farmers, a forestry representative, environmental advocacy group representatives, industry representatives, a law professor, the executive director of a watershed management council, and an environmental consultant. Members came from both the public and private sectors, and each brought to the committee diverse professional expertise, including law, science, public policy, management, public advocacy, and engineering. Representatives of the United States Department of Agriculture's Natural Resources Conservation Service and Forest Service, and EPA's Office of Water served as *ex officio* members of the FACA Committee.

The FACA Committee completed its deliberations in May 1998 and submitted its final report to EPA on July 28, 1998. The FACA Committee's final report includes over one hundred and sixty recommendations for improving government efforts to identify impaired waters and establish TMDLs.

B. Summary of the Proposed Rule

1. What Is the Purpose of Today's Proposed Rule?

The purpose of today's proposed rule is to clarify and strengthen how TMDLs are established so they can more effectively contribute to improving the nation's water quality. Through this proposal, EPA intends to provide clear regulatory requirements that are consistent with State, Territorial and authorized Tribal water quality programs, in particular State, Territorial and authorized Tribal watershed approaches to water quality management. Under these approaches, water quality programs can be tailored to the characteristics, problems, risks, and implementation tools available in individual watersheds, with meaningful involvement stakeholders in the local community.

In developing the proposal, EPA has carefully examined the recommendations of the FACA Committee, as well as recommendations proposed to EPA by interested stakeholders, including State and local governments, other Federal agencies, environmental advocacy organizations, industry, agriculture, and citizens. This proposal also reflects the lessons learned by EPA and the States since 1992, when this regulation was last revised.

Pursuant to section 518(e) of the CWA, EPA is authorized to treat an Indian Tribe in the same manner as a State for purposes of establishing lists of impaired waters and TMDLs. Section 130.6(d) of EPA's water quality planning and management regulations provides that a federally-recognized Indian Tribe is eligible for treatment as a State for purposes of that rule if (1) The Tribe has a governing body capable of carrying out substantial governmental duties and powers; (2) the functions to be exercised by the Tribe pertain to the management and protection of water resources which are held by a Tribe, by the United States in trust for Indians, by a member of a Tribe if such property is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation; and (3) the Tribe is reasonably expected to be capable of carrying out the functions to be exercised consistent with the terms and purposes of the CWA and applicable regulations.

Today, EPA is clarifying that it interprets § 130.6(e) as implementing section 518(e) for purposes of allowing Indian Tribes to apply to EPA for authority to establish lists of impaired waters and TMDLs pursuant to section 303(d) of the CWA. Accordingly, if a

federally-recognized Indian Tribe can demonstrate to EPA that it meets the test contained in § 130.6(d) for purposes on the TMDL program, EPA will authorize it to establish lists of impaired waters and TMDLs for reservation surface waters over which the Tribe has jurisdiction.

EPA interprets the term ''reservation'' in § 130.6(d)(3) in light of Supreme Court case law, including *Oklahoma Tax Comm'n* v. *Citizen Band Potawatomi Indian Tribe of Oklahoma,* 111 S.Ct. 905, 910 (1991), in which the Supreme Court held that a ''reservation'' includes trust lands that have been validly set apart for the use of a Tribe even though the land has not been formally designated as a reservation. See 56 FR 63881.

In applying to EPA for authority to establish lists of impaired waters and TMDLs, Tribes are to follow the application requirements contained in § 131.8(b) of EPA's water quality standards regulations. In reviewing such applications, EPA will follow the procedures contained in § 131.8(c). In the final rule, EPA is considering revising language in § 131.8(b) and (c) to clarify that they apply to treating Tribes in the same manner as States for § 303(d) lists and TMDLs, as well as water quality standards. (See revised § 131.8(b) and (c) in docket.) EPA requests comments on this approach.

Under today's proposed rule, in order to be treated in the same manner as a State, an Indian Tribe would need adequate authority over the waters for which it seeks to establish lists and TMDLs. The jurisdiction of Indian Tribes generally extends ''over both their members and their territory.'' *United States* v. *Mazurie,* 419 U.S. 544, 577 (1975). However, Indian reservations may include lands owned in fee by nonmembers. ''Fee lands'' are privately owned by nonmembers and title to the lands can be transferred without restrictions. The Supreme Court, in *Montana* v. *U.S.*, 450 U.S. 544, 565–66 (1981), noted that tribes may have authority over nonmember activities on reservation fee lands in certain circumstances, including when the nonmember conducts ''threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the Indian tribes.''

EPA addressed the *Montana* test in the 1991 preamble to the Agency's final rule regarding tribal water quality standards programs under the CWA. In that 1991 preamble, in view of some judicial uncertainty at that time regarding the degree of impacts necessary to satisfy the *Montana* test, EPA established an ''operating rule'' that requires tribes seeking eligibility to set water quality standards governing activities of nonmembers on fee lands to show that the effects are ''serious and substantial.'' 56 FR 64878. EPA noted that ''[t]he choice of an Agency operating rule containing this standard is taken solely as a matter of prudence in light of judicial uncertainty and does not reflect an Agency endorsement of this standard *per sc.*'' Since 1991, however, the Supreme Court has reaffirmed *Montana's* impacts test verbatim without addressing the need for ''serious'' or ''substantial'' impacts. *E.g. Strate* v. *A–1 Contractors,* 117 S.Ct 1404 (1997); *South Dakota* v. *Bourland,* 508 U.S. 679 (1993). While not required to do so, as a matter of policy EPA will continue to look to see whether serious and substantial impacts exist when evaluating tribal authority under the *Montana* test.

In *Strate,* 117 S.Ct. At 1414, the Supreme Court made clear that *Montana* remains the controlling standard for evaluating tribal authority over nonmember activities in fee lands. The Court emphasized in *Strate* that the purpose of *Montana's* impacts test is to insure that Tribes retain their powers of self-government. EPA believes that protecting the public through environmental protection programs from serious and substantial effects on health and welfare is a core governmental function whose exercise is critical to self-government. See 56 FR 64879.

Whether an Indian Tribe has jurisdiction over activities of nonmembers on fee lands will be determined case-by-case, based on factual findings. The determination as to whether the required effect is present in a particular case depends on the circumstances. The Agency believes, however, that the activities covered by the TMDL program generally have the potential for direct impacts on human health and welfare that are serious and substantial. See 56 FR 64878. EPA's approach to evaluating tribal jurisdiction on fee lands was recently upheld by the Ninth Circuit Court of Appeals in *Montana* v. *EPA,* 137 F 3d 1135 (9th Circuit), cert. Denied, 119 S.Ct. 275 (1998).

The process that the Agency will use for Indian Tribes seeking to demonstrate their authority over nonmembers on the fee lands for the TMDL program includes a submission of a statement under § 131.8(b) explaining the legal basis for the applicant Indian Tribe's authority. The Indian Tribe must explicitly assert and demonstrate jurisdiction, i.e., show that activities covered by the TMDL program conducted by nonmembers on fee lands could lead to water quality impairments that have impacts on the health, welfare, economic security or political integrity of the Indian Tribe and its members that are serious and substantial. However. EPA will also rely on its generalized findings regarding the relationship of activities regulated under water quality programs and impacts to Tribal health, welfare, economic security or political integrity. See 56 FR at 64878 and 64879.

Under § 131.8(c)(2)(ii), appropriate governmental entities (i.e., States, Tribes and other Federal entities located contiguous to the reservation of the Tribe that is applying for treatment in the same manner as a State) will be provided notification of and an opportunity to comment on the Indian Tribe's jurisdictional assertions prior to EPA's action on the Indian Tribe's application. EPA will seek to make its notification sufficiently prominent to inform local governmental entities, industry and the general public, and will advise interested parties to direct comments on tribal jurisdiction to appropriate governmental entities.

The Agency recognizes that jurisdictional disputes between Indian Tribes and States can be complex and difficult and that it may, in some circumstances, be most effective to address such disputes by attempting to work with the parties in a mediative fashion. However, EPA's ultimate responsibility is protection of human health and the environment. In view of the mobility of environmental problems, and the interdependence of various jurisdictions, it is imperative that all affected sovereigns work cooperatively for environmental protection.

2. What Are the Key Changes the Proposed Rule Makes to Existing Regulatory Requirements?

Below is a summary of the key changes to the existing regulatory requirements that are being proposed today:

- Revised definitions of TMDL, wasteload allocation, and load allocation;
- Definitions of impaired waterbody, threatened waterbody, pollution, pollutant, reasonable assurance and waterbody that clarify EPA's existing interpretation of these terms;
- A new requirement for a more comprehensive list and a new format for the list;
- A new requirement that States, Territories and authorized Tribes establish and submit schedules for establishing TMDLs for all waterbodies impaired or threatened by pollutants;
- A new requirement that the listing methodologies developed by States, Territories and authorized Tribes be more

specific, subject to public review, and submitted to EPA on January 31 of every [second], [fourth] or [fifth] year;

- A possible change in the listing cycle so that States, Territories and authorized Tribes submit lists to EPA on October 1 of every [second], [fourth] or [fifth] year beginning in the year 2000;
- Clarification that TMDLs include 10 specific elements;
- A new requirement for an implementation plan as a required element of a TMDL; and
- New public participation requirements.

Today's proposed rule language encompasses all of 40 CFR part 130 even though EPA is not proposing to revise most of the existing sections in this Part. EPA is, however, proposing to reformat the part to include subparts and to extensively renumber the sections in part 130, in addition to the substantive revisions discussed in detail below. EPA is also proposing to delete § 130.3, which sets out the same definition of ''water quality standard'' that is found in the water quality standards regulations at 40 CFR part 131 and, as a result, is duplicative and unnecessary. Today's proposal also would delete § 130.10(d), which is obsolete and no longer relevant since it provided for a one-time deadline of February 4, 1989, for State submission of certain water quality information. In light of the extent of these formatting and numbering changes, EPA is publishing all of 40 CFR part 130 to show how the changes proposed today relate to the existing sections of the current regulation. The following table of contents for part 130 identifies each of the sections in the proposed rule and highlights the proposed changes.

40 CFR Part 130 as Revised and Reorganized by Today's Proposal

Subpart A: Summary, Purpose, and Definitions

130.0 Program summary and purpose (unchanged)
130.1 Applicability (unchanged)
130.2 Definitions (amended in part)
130.3 Deleted

Subpart B: Water Quality Monitoring and Reporting

130.10 Water quality monitoring (formerly § 130.4, unchanged)
130.11 Water quality report (formerly § 130.8; unchanged)

Subpart C: Identifying Impaired and Threatened Waterbodies and Establishing Total Maximum Daily Loads (TMDLs) (formerly § 130.7; amended; see below)

130.20 Who must comply with subpart C of this rule?
130.21 What is the purpose of this subpart?
130.22 What data and information must you assemble to identify and list impaired or threatened waterbodies?
130.23 How do you document your approach for considering and evaluating all existing and readily available data and information to develop your list and priority rankings?
130.24 When must your methodology be submitted to EPA?
130.25 What is the scope of your list of impaired or threatened waterbodies?
130.26 How do you apply your water quality standards antidegradation policy to the listing of impaired and threatened waterbodies?
130.27 How must you format your list of impaired or threatened waterbodies?
130.28 How do you prioritize the waterbodies on Part 1 of your list?
130.29 When can you remove a waterbody from your list?
130.30 When must you submit your list of impaired or threatened waterbodies and priority rankings to EPA and what will EPA do with it?
130.31 What must your schedule for submitting TMDLs to EPA contain and when must you submit it to EPA?
130.32 Must you establish TMDLs?
130.33 What are the minimum elements of a TMDL submitted to EPA?
130.34 How are TMDLs expressed?
130.35 What actions must EPA take on TMDLs that are submitted for review?
130.36 Can EPA establish a TMDL if you fail to do so?
130.37 What public participation requirements apply to the list, priority rankings, schedule, and TMDLs?
130.38 What is the effect of the proposed rule on transitional TMDLs?

Subpart D: Water Quality Planning and Implementation

130.50 Continuing planning process (formerly § 130.5; amended, see below)
130.51 Water quality management plans (formerly § 130.6; amended, see below)

Subpart E: Miscellaneous Provisions

130.60 Designation and De-Designations (formerly § 130.9; unchanged)
130.61 State submittal to EPA (formerly § 130.10; removed section, otherwise unchanged)
130.62 Program management (formerly § 130.11; unchanged)
130.63 Coordination with other programs (formerly § 130.12; unchanged)
130.64 Processing application for Indian Tribes (formerly § 130.15; unchanged)
130.65 Petitions to EPA to establish TMDLs (new section)

3. What Definitions Are Being Added or Revised by this Proposal?

Existing requirements. The existing regulations contain definitions of ''TMDL,'' ''wasteload allocation,'' and ''load allocation.''

Proposed rule. Today's action proposes revisions to the definitions of ''TMDL'', ''wasteload allocation,'' and ''load allocation'' that clarify and add to the required elements of TMDLs and the ways in which TMDLs can be expressed. Today's action also proposes adding definitions for the terms ''pollution,'' ''pollutant,'' ''impaired waterbody,'' ''threatened waterbody,'' ''thermal discharge,'' ''reasonable assurance'' and ''waterbody.''

Today's proposal significantly revises the text of the regulatory definition of ''TMDL.'' The proposed revisions are intended primarily to define what a TMDL is and the elements it must contain. Instead of describing a TMDL as the sum of wasteload allocations and load allocations, as in the current regulations, EPA proposes to define a TMDL as a written analysis of an impaired waterbody established to ensure that water quality standards will be attained and maintained throughout the waterbody in the event of reasonably foreseeable increases in pollutant loads. The proposed revision to the definition of ''TMDL'' also includes a statement describing the 10 basic elements of a TMDL required for approval by EPA, as contained in proposed 40 CFR 130.33(b) and discussed in section 5.a. of this preamble.

EPA is proposing to revise the definition of a TMDL for a number of reasons. Current regulatory requirements have engendered different interpretations. States, Territories and authorized Tribes need greater certainty in establishing TMDLs and submitting them to EPA for approval. EPA requires a more precise definition to promote consistency in reviewing and approving TMDLs nationally. Other stakeholders need a clear understanding of what the minimum regulatory requirements are for TMDLs.

EPA is also proposing to revise the definition of a TMDL to clarify that TMDLs are established for pollutant(s) and that a TMDL sets the amount of pollutant(s) that may be present in a waterbody and still assure that the water quality standards are attained or maintained. Although States, Territories and authorized Tribes have the flexibility to develop a TMDL for a single pollutant in a listed waterbody and develop TMDLs for other pollutants on that waterbody at a later date, EPA encourages States, Territories and authorized Tribes to develop TMDLs for all pollutants impairing a listed waterbody at the same time. In addition, EPA is revising the definition to clarify the ways in which TMDLs can be expressed to meet the requirements of the CWA.

In addition, EPA is proposing to include in the definition of ''TMDL'' a statement of the statutory requirement that a TMDL be established with seasonal variations. EPA interprets this

statutory language as requiring that TMDLs be established to implement water quality standards in any season. While there may be other ways a TMDL can be established ''with'' seasonal variation, the proposed interpretation is consistent with the statutory directive that TMDLs ''be established at a level necessary to implement the applicable water quality standards with seasonal variation.'' The most straightforward interpretation of this language is that Congress intended for TMDLs to be established at levels that describe the maximum allowable loading in different seasons of the year, to implement standards year-round. This may require that, for some pollutants, different TMDLs are established for different levels of instream flow, based on variations in flow over the course of the year.

TMDLs may be established on a watershed basis. TMDLs established on a watershed basis must, like all TMDLs, be established for each pollutant identified as causing or expected to cause an exceedance of water quality standards and assure that water quality standards are attained and maintained throughout the watershed. Certain pollutants, e.g. nutrients, might be best addressed by allocating pollutant loads on a watershed, rather than on a segment-specific, basis. In such cases, TMDLs established for a watershed would be more likely to result in effective control measures than segment-by-segment TMDLs.

Finally, EPA proposes to amend the definition of ''TMDL'' to clarify that TMDLs must be established to ensure that water quality standards will be attained and maintained in the event of reasonably foreseeable increases in pollutant loads. This proposed revision is intended to address waters that are currently impaired or threatened and are expected to experience increased pollutant discharges. Since the CWA requires TMDLs to be established at levels ''necessary to implement'' standards, States, Territories and authorized Tribes need to address anticipated increases in pollutant loadings that could result in (or exacerbate) the current failure to attain and maintain water quality standards. While there may be situations where load increases cannot reasonably be anticipated, generally it should be possible to establish TMDLs in such a manner as to anticipate increases in pollutant loadings over time. For this reason, EPA is proposing to clarify the current definition of ''TMDL'' by explicitly stating that TMDLs must assure attainment and maintenance of applicable standards in the event of reasonably foreseeable load increases.

EPA is proposing clarifying revisions to the current definition of ''load allocation.'' These proposed revisions explicitly include atmospheric deposition as a nonpoint source of pollutants, codifying EPA's current interpretation. EPA's authority to require load allocations for atmospheric deposition is discussed in greater detail in section 4.b. of this preamble. Today's proposed § 130.33(b)(6) also clarifies that load allocations may, if possible, contain allocations to categories, subcategories, or individual sources while emphasizing EPA's intent to require establishment of TMDLs where sufficient information is not available to allocate loads to individual nonpoint sources.

EPA is proposing to allow some wasteload allocations to contain an allocation to a single point source or to a group of point sources. Current regulations require a wasteload allocation for each existing or future point source. EPA is proposing at § 130.33(b)(5) to allow allocations to categories or subcategories of point sources that are subject to a general permit (including storm water, combined sewer overflows, abandoned mines, and combined animal feeding operations), and to categories and subcategories of sources where the pollutant load does not need to be reduced in order to meet water quality standards. Wasteload allocations for individual point sources would still be required for each industrial and municipal point source permitted under CWA section 402. It is appropriate to allocate to the aggregate of sources covered by a general permit since the number and identity of sources discharging under a general permit generally will not be known. Since the CWA does not contain the terms ''load allocation'' and ''wasteload allocation,'' EPA has discretion to interpret these terms, created in the regulations to implement the TMDLs, in a reasonable manner.

EPA is proposing to amend the current regulations by adding definitions of the terms ''impaired waterbody'' and ''threatened waterbody.'' The proposed definitions of these terms are derived from the definitions in EPA's guidance (*Guidelines for Preparation of the Comprehensive State Water Quality Assessments (305(b) Reports and Electronic Updates*, EPA–841–B–002A, September 1997) on section 305(b) reports. The addition of these definitions clarifies States', Territories' and authorized Tribes' listing and TMDL establishment obligations by clarifying the kinds of waterbodies that must be included on section 303(d) lists and the kinds of waterbodies for which TMDLs must be established. EPA's rationale for the types of waterbodies for which TMDLs must be established is discussed in greater detail in section 4.b. of this preamble.

EPA is also proposing a definition of the term ''reasonable assurance.'' EPA proposes to define ''reasonable assurance'' in § 130.2(p) as a demonstration that wasteload allocations and/or load allocations in a TMDL will be implemented. EPA proposes that each TMDL contain reasonable assurance that allocations contained in TMDLs will in fact be implemented to attain and maintain water quality standards. EPA's incorporation of this term in § 130.33(b)(10)(iii) dealing with TMDL implementation plans emphasizes EPA's view that implementation of the allocations in TMDLs is critical to the ultimate attainment of standards in waterbodies across the country. The proposed regulations provide that reasonable assurance for point sources is demonstrated by procedures that ensure that enforceable NPDES permits will be issued to implement applicable wasteload allocations for point sources. For nonpoint sources, reasonable assurance means that nonpoint source controls will be implemented to achieve applicable load allocations. For nonpoint sources reasonable assurance would need to be specific to the pollutant of concern, expeditiously implemented and supported by reliable delivery mechanisms and adequate funding.

EPA also proposes to add to the regulations the CWA's definitions of ''pollutant'' and ''pollution.'' This decision is explained in greater detail in section 4.b. of this preamble. This amendment is intended to clarify that the statutory definitions apply to these terms as used in the TMDL regulations. Similarly, EPA is proposing a definition of ''thermal discharge'' to clarify the meaning of that term for the purposes of TMDLs..

EPA is proposing to clarify that the definition of pollutant encompasses drinking water contaminants that are regulated under section 1412 of the Safe Drinking Water Act (SDWA) and that may be discharged to waters of the U.S. that are the source waters of one or more public water systems. This clarification is consistent with both the language and the intent of the CWA. First, drinking water contaminants that meet the criteria of this clarification fall within the meaning of one or more of the terms

used to define pollutant. Second, ''public water supplies'' is listed under section 303(c)(2)(A) of the CWA as a potential beneficial use to be protected by water quality standards.

To elaborate, all microbial contaminants that may be discharged to waters of the US (e.g., bacteria, viruses and other organisms) fall under the term ''biological materials''; chemical contaminants that may be discharged to waters of the US (e.g., industrial solvents, pesticides) fall under the term ''chemical wastes''; and all radio nuclides that may be discharged to waters of the U.S. fall under the term ''radioactive materials''. Drinking water contaminants regulated in the future that meet this criteria will also fall under one or more of these terms.

Under the SDWA, pollutants are referred to as ''contaminants'' and, pursuant to section 1412, EPA is required to ''promulgate a national primary drinking water regulation for a contaminant * * * if the Administrator determines that: (i) The contaminant may have an adverse effect on the health of persons; (ii) the contaminant is known to occur or there is a substantial likelihood that the contaminant will occur in public water systems with a frequency and at levels of public health concern; and (iii) in the sole judgment of the Administrator, regulation of such contaminant presents a meaningful opportunity for health risk reduction for persons served by public water systems.''

Finally, EPA is proposing a definition of the term ''waterbody'' that codifies EPA's interpretation of the term for the purposes of TMDLs. The proposed definition includes a broad range of waterbodies, geographically defined so that members of the public can easily locate waterbodies included on States', Territories' and authorized Tribes' section 303(d) lists. Section 303(d) distinguishes between waterbodies impaired by pollution and pollutants generally and waterbodies affected by ''thermal discharges.'' For waterbodies impaired by pollution and pollutants generally, listing and/or TMDL decisions are based on whether the water is or is not attaining or maintaining water quality standards.

Waterbodies affected by ''thermal discharges,'' are subject to different listing criteria and requirements for establishing TMDLs. Under section 303(d)(1)(B), each State shall identify those waterbodies for which controls on thermal discharges under section 301 are not stringent enough to assure ''protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife.'' Similarly, under section 303(d)(1)(D), States shall estimate for such waterbodies ''the total maximum daily thermal load required to assure protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife.''

This distinction between ''pollution'' and ''pollutants'' generally and ''thermal discharges'' has its origins in section 316 of the CWA. Section 316 provides that the ''balanced, indigenous population'' standard (''BIP'') may be applied to determine the thermal component of an effluent limit for any point source subject to the provisions of sections 301 or 306 in lieu of more stringent effluent limitations. The drafters of section 316 believed that thermal discharges from point sources should be treated in a different manner than other pollutants. [CWA Leg. His. at 227–28]. Congress believed that steam-electric generating plants were the major sources of thermal discharges subject to CWA regulation. [CWA Leg. His. at 263]. It believed that thermal discharge limits for such facilities should be set on a case-by-case basis, taking into account the nature, physical characteristics, and dissipative capabilities of the receiving water. [*Id.*].

This distinction was carried over into section 303(d). It is important to note, however, that the more flexible ''BIP'' standard only applies to listing and TMDL actions related to thermal discharges from point sources. It does not apply to listing and TMDL decisions related to heat excesses in waterbodies resulting from other causes, such as solar radiation, channel and habitat modification and lack of stream flow. Where heat build up is a result of those (and other non-point source discharge) causes, decisions to list and establish TMDLs related to heat must be based on the applicable water quality standard for heat. In other words, whereas listing and TMDL decisions for ''thermal discharges'' from point sources are regulated under CWA sections 303(d)(1)(B) and 303(d)(1)(D), such decisions for water bodies impaired by heat from other causes are regulated under CWA sections 303(d)(1)(A) and 303(d)(1)(C).

This is a reasonable interpretation of the statute. Given the express language of sections 303(d)(1)(B) and (D), it is clear that Congress wanted lists and total maximum daily thermal loads to address the problems presented by discharges of heat from point sources, i.e., thermal discharges, albeit using a different standard (''BIP'') than for other pollutants covered by sections 303(d)(1)(A) and (C). Because Congress included ''heat'' in the definition of ''pollutant,'' EPA also reads section 303(d) as covering all forms of heat-impaired waterbodies and not just those affected by thermal discharges. Congress's express reference to ''thermal discharges'' was not intended to limit the section's applicability to impairments caused by point sources. Instead, Congress merely wanted to ensure that point source thermal discharges were given the same treatment under section 303(d) as under section 316. Where water quality standards for temperature are not being attained due to other causes, e.g., sediment runoff, habitat degradation, flow diversion, sections 303(d)(1)(A) and (C) would apply.

Comments sought. EPA solicits comment on any or all aspects of the proposed revisions to the existing definitions and the addition of new definitions.

4. What Are the Proposed Rule's Requirements for Identifying and Listing Impaired or Threatened Waterbodies?

a. Assembling the Data and Documenting the Approach for Considering and Evaluating Existing and Readily Available Data and Information

Existing requirements. Existing regulations require States, Territories and authorized Tribes to assemble and evaluate ''all existing and readily available water quality-related data and information'' when developing their lists. Existing regulations specify that ''all existing and readily available water quality-related data and information'' includes, but is not limited to, data and information about: waterbodies identified in: (1) The States', Territories' and authorized Tribes' most recent approved section 303(d) list; (2) States', Territories', and authorized Tribes' most recent CWA section 305(b) report as ''partially meeting'' or ''not meeting'' designated uses or as ''threatened''; (3) section 319 nonpoint source assessments; (4) drinking water source assessments under section 1453 of the Safe Drinking Water Act; (5) dilution calculations or predictive models which indicate nonattainment of water quality standards; and (6) data and information reported by local, State, or Federal agencies, e.g. National Water Quality Assessment, (NAWQA), National Stream Quality Accounting Network (NASQAN), members of the public, or academic institutions.

In addition, existing regulations require States, Territories and authorized Tribes to submit to EPA a description of the methodology used to develop the list, a description of the data and information used to list

waterbodies, a rationale for any decision to not use any existing and readily available data and information, and any other reasonable information requested by the Regional Administrator, including ''good cause'' for not including a waterbody or waterbodies on the list.

Proposed rule. EPA recognizes, as did the FACA Committee, that well-designed monitoring programs are vital elements in States', Territories', and authorized Tribes' efforts to characterize, identify, and ensure the protection and restoration of impaired and threatened waterbodies. Because monitoring is expensive and time-consuming, however, it is generally the case that only a small percentage of each States', Territories', and authorized Tribes' waterbodies are actually being monitored to identify impairments or threats, and States, Territories, and authorized Tribes must strive continually to expand the scope of their monitoring programs by carefully focusing resources to achieve the greatest positive influence on water quality.

In today's proposal, at § 130.22, EPA is retaining the requirement that States, Territories, and authorized Tribes assemble and consider all existing and readily available data and information to identify impairments and threats to impairment and develop their lists. The sources of existing and readily available data and information specified in the proposed regulation constitute the basic sources and types of information States, Territories and authorized Tribes need to consider in order to determine which waterbodies are impaired and threatened. In addition, these sources of data and information are required to be developed and collected by both the CWA and the SDWA and are generally available to States, Territories, authorized Tribes and stakeholders.

In developing today's proposal, EPA considered the proper role of ''monitored data'' and ''evaluated data and information.'' Monitored data refers to direct measurements of water quality, including sediment, bioassessments and some fish tissue analyses. Evaluated data and/or information provides an indirect appraisal of water quality through such sources as information on historical adjacent land uses, aquatic and riparian health and habitat, location of sources, results from predictive modeling using input variables and some surveys of fish and wildlife. The FACA Committee recognized the differences in available data and information. Although the committee preferred basing listing decisions on monitored data, it also recognized the reality of needing to use evaluated information. Today's proposal therefore reflects the need for States, Territories, and authorized Tribes to consider and evaluate both monitored and evaluated data and information. EPA agrees with the FACA Committee's recommendation that the best available data and information for each waterbody being considered for listing should be used. It is appropriate to use both monitored and evaluated data.

EPA is proposing at § 130.22(b)(4) to include the results of source water assessments conducted under section 1453 of the SDWA as ''existing and readily available data'' which States, Territories, and authorized Tribes must consider in deciding whether to list a waterbody as impaired or threatened. Under the Source Water Assessment Program (section 1453, SDWA), States must ''delineate the boundaries of the assessment areas from which one or more public water systems . . . receive supplies of drinking water'' and, within each delineated area, ''identify the origins of contaminants'' for which safety standards have been established to ''determine the susceptibility of the public water systems to such contaminants.'' These delineated areas will include one or more stream segments, or waterbodies, upstream of each intake. The assessments will identify each pollutant (contaminant), and the origins thereof, to which a public water system has some degree of susceptibility.

A ''national primary drinking water regulation'' (NPDWR) is the SDWA's term for a drinking water safety standard. Safety standards are typically established as ''maximum contaminant levels'' (MCLs) and expressed as concentrations e.g., milligrams per liter (mg/l). Safety standards are sometimes established as ''action levels'', or a similar term, but are also expressed as concentrations. Therefore, drinking water safety standards provide reference points (a) Against which States can compare water quality monitoring data, or (b) that States can use to add or revise water quality criteria to support public water supply use, in the absence of more stringent criteria that support more sensitive ecological uses.

Source water assessments will need to incorporate data from compliance monitoring and ambient water quality monitoring to support use of the assessment results as a basis for listing a waterbody as impaired or threatened. In some cases, this is easily accomplished *e.g.*, where compliance monitoring for chemical contaminants is required at the intake or where compliance monitoring data is unaffected by intervening treatment that is not designed to address the contaminant at issue. In other cases, where intervening treatment is affecting the monitoring results, it may be possible to estimate (back calculate) the ambient water values from the compliance monitoring results.

If the listing is based on a designated use but the State has not adopted a water quality criterion for the pollutant(s) of concern, either in support of public water supply use or in support of a more stringent use (*e.g.*, aquatic habitat), the State should use a reference point sufficiently below the drinking water safety standard (maximum contaminant level or MCL) to prevent excursions above the safety standard at the source water intake as its starting point for developing a TMDL

Today's proposal, at § 130.23, also retains the requirement that States, Territories, and authorized Tribes submit to EPA a methodology documenting their approach for considering and evaluating the data and information used to develop the list and priority rankings. Today's proposal requires States, Territories, and authorized Tribes to explain to EPA and to the public how they will consider and evaluate chemical, physical, biological and radiological data and information and describe the data thresholds they will use to define waterbodies that are impaired or threatened and are required to be listed.

EPA is also requiring that the methodology used to compile the section 303(d) list must contain a description of the method and factors used to assign a priority ranking to the waterbodies on a list, *i.e.*, how States, Territories and authorized Tribes consider the severity of the impairment or threat of impairment and the uses to be made of the waterbody and any other factors in assigning priority rankings to listed waterbodies (see section 4.d, below). Moreover, States, Territories and authorized Tribes must provide for public notice and comment on a draft version of the methodology and submit the final methodology, along with a summary of the public comments, to EPA on January 31 of every listing year, which is eight months before the October 1 list submission deadline. The proposed rule provides that EPA will review the listing methodology and may provide comments to the State, Territory or authorized Tribe. EPA recognizes that final regulations may be promulgated after January 31, 2000. In this event, EPA may decide in the final regulations to specify an alternative date, most likely in year 2000, for States, Territories, and authorized Tribes to

submit their methodology to EPA. EPA solicits comment on when to require submittal of the listing methodology, in the event that the regulations are promulgated after January 31, 2000.

These additional requirements are aimed at providing EPA and the public with a comprehensive description of each State's, Territory's and authorized Tribe's approach for listing waterbodies. It is critical that the public have an opportunity to understand and participate in the States', Territories' and authorized Tribes' listing process. These requirements are also intended to help ensure that States, Territories and authorized Tribes consistently use reliable and credible data and information. While EPA does not expect every State, Territory and authorized Tribe to use exactly the same information and have exactly the same minimum data requirements for identifying and listing impaired and threatened waterbodies, EPA does expect each State, Territory and authorized Tribe to document and follow a deliberate, logical, and consistent approach for making listing decisions.

EPA will consider the methodology when it reviews and approves or disapproves the section 303(d) list. EPA's comments on the methodology will address whether the methodology will result in the identification of all impaired or threatened waterbodies. When EPA reviews the State's, Territory's or authorized Tribe's list, EPA will review how the State, Territory or authorized Tribe responded to comments raised during EPA's review of the methodology. EPA may cite any unremedied deficiencies it raised in comments to the State, Territory or authorized Tribe as a factor in a decision to disapprove all or part of the State's, Territory's or authorized Tribe's list.

Today's proposal therefore requires that States, Territories and authorized Tribes document their methods for determining impairment and develop appropriate decision rules based on whether they are considering and evaluating physical/chemical, biological, radiological, or aquatic and riparian habitat data and information. The methodology may, for example, explain how many exceedances of a numeric chemical criteria constitute an impairment or threat. Similarly, the methodology may explain how information on riparian condition and streambank stability might be used to determine whether a waterbody is impaired or threatened.

Today's proposal recommends a closer relationship between the section 303(d) and section 305(b) processes by requiring the section 303(d) listing methodology to describe how section 305(b) information will be used to determine which waterbodies should be included on the section 303(d) list. EPA recommends that States, Territories and authorized Tribes use the section 305(b) guidelines for defining waters that are impaired or threatened when developing this part of the section 303(d) listing methodology. While these section 305(b) decision rules represent a solid starting point for State, Territorial and authorized Tribal section 303(d) listing methodologies, EPA encourages State, Territorial and authorized Tribal listing methodologies for section 303(d) to be more specific, if necessary, to determine which waterbodies are impaired or threatened. EPA also encourages consistency between water quality reported in the section 305(b) report and the section 303(d) list of impaired and threatened waterbodies, particularly in regard to waterbodies that are impaired for purposes of section 303(d) and not supporting or partially supporting uses as reported under section 305(b).

Today's proposal eliminates the existing regulatory provisions that States, Territories and authorized Tribes provide EPA with a rationale for any decision not to use any existing and readily available data and information, and that, upon request by the EPA Regional Administrator, States, Territories or authorized Tribes may demonstrate ''good cause'' for not including a waterbody or waterbodies on the list. These provisions are redundant and unnecessary in light of the more specific requirements in today's proposal for States, Territories and authorized Tribes to provide EPA and the public with a more detailed methodology for developing their lists.

EPA also agrees with the concern expressed by some States, Territories, or authorized Tribes that listing decisions and TMDL calculations be based on high-quality data that meets State procedures for data quality and will, if necessary, stand up to legal challenge. EPA intends for the methodology required by today's proposal to support, not undermine, State procedures for assuring data quality and use of appropriate analytic methods. Further, EPA intends that the proposed requirement in § 130.22 for States, Territories, and authorized Tribes to consider all existing and readily available information and document their approach for doing so be consistent with the State, Territorial, or authorized Tribal data quality control procedures and methodologies documented in accordance with proposed § 130.23. Accordingly, data which does not meet data requirements established in the methodology required by today's proposal need not be used for listing; likewise, data that does meet data requirements in the methodology must be used. EPA requests comment on the requirements in § 130.22 and § 130.23.

Today's proposal also recommends that, where the waterbody is designated for drinking water use, the TMDL methodology should address information developed for source water assessments under the SDWA. The types of information developed for source water assessments that will be important in determining impairment of waterbodies and needed corrective actions are the information that States, Territories and eligible Tribes use to delineate source water areas, identify the origin of contaminants, and determine public water system susceptibility.

Exceedance of a narrative criterion is a basis for placing a waterbody on the section 303(d) list. EPA recognizes that to establish a TMDL where a narrative criterion has been exceeded, it is necessary to quantify how the narrative criterion should be interpreted for specific pollutant loads. EPA's Water Quality Standards Regulation Advance Notice of Proposed Rulemaking (ANPRM) describes current requirements for States and authorized Tribes to identify the procedures they intend to use to interpret and implement narrative criteria as they pertain to point source discharges of toxics (63 FR 36742 at 36765, July 7, 1998). The ANPRM emphasizes the need for clear procedures for interpreting and implementing narrative criteria and requests comment on whether the current identification requirements should be expanded to include interpretation of narratives as they pertain to nonpoint sources and pollutants in addition to toxics (see ANPRM at 36765, questions 6 and 7). EPA's current thinking is that such interpretation and implementation procedures are necessary and, if required, should be required by amending the water quality standards regulation as contemplated in the ANPRM discussion cited here.

The methodology proposed today requires, at § 130.23(d)(2), a process for resolving disagreements with other jurisdictions. States, Territories and authorized Tribes often have different water quality standards for boundary waterbodies. Establishing TMDLs for boundary waterbodies requires agreement on how to determine when a

waterbody is impaired or threatened and for what pollutant load the TMDL must be established. Having dispute resolution mechanisms in place will eliminate many potential disagreements and conflicts.

Finally, the proposal requires, at § 130.23(e), that the methodology specify exactly what conditions must exist before the waterbody is removed from the list of impaired and threatened waterbodies.

Other options considered. In developing today's proposal, EPA considered several other options. One option considered was to retain all existing regulatory requirements. EPA also considered developing, and requiring all States, Territories and authorized Tribes to follow, a single national listing methodology and criteria to develop their lists. EPA also considered two default listing approaches. First, EPA considered streamlining the listing process by requiring that, absent data and information indicating attainment of water quality standards, waterbodies must be included on State, Territorial and Tribal lists. Alternatively, EPA considered streamlining the listing process by requiring that waterbodies not be included on State, Territorial and authorized Tribal lists unless data and information demonstrated non-attainment of water quality standards.

Comments sought. EPA seeks comments on whether the TMDL regulations should retain the requirement that States, Territories and authorized Tribal lists consider and evaluate existing and readily available data and information in developing their lists of impaired and threatened waterbodies. EPA would also like comments on whether the regulation should more specifically define national minimum criteria or thresholds that define waterbodies that are impaired or threatened (e.g., existing criteria used for development of 305(b) reports). EPA is also seeking comment on the proposal to require States to provide more details on their listing methodologies and eliminate the current provision that, upon request by the EPA Regional Administrator, States, Territories and authorized Tribes may demonstrate ''good cause'' for not including a waterbody or waterbodies on the list. EPA solicits comments on any aspects of the proposal, including the options considered.

b. Scope of the list

Existing requirements. Existing regulations (40 CFR 130.7(b)(1)) require that State, Territorial and authorized Tribal lists include waterbodies for which pollution control requirements required by local, State, or Federal authority, including technology-based or more stringent point source effluent limitations or nonpoint source best management practices, are not stringent enough to implement water quality standards. In addition, existing regulations require States, Territories and authorized Tribes to identify the pollutants causing or expected to cause violations of water quality standards. EPA guidance on the scope of the list has been incomplete. Successive guidance documents, starting with the guidance issued in April 1991 (*Guidance for Water Quality-based Decisions: The TMDL Process*, EPA 440/4–91–001, April 1991), did not specifically address whether the definition of pollution contained in section 502(19) (''the man made or man-induced alteration of the chemical, physical biological or radiological integrity of water''), or the definition of pollutant in section 502(6) (''the term pollutant means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water * * *'') of the CWA, was the proper basis of determining impairment and listing waterbodies on the section 303(d) list. The result was that some States, Territories and authorized Tribes used the broader definition of pollution while others used the narrower definition of pollutant to identify and list impaired waterbodies. EPA approved lists which identified impaired waterbodies on the basis of both definitions. In August, 1997 EPA issued guidance (*New Policies for Establishing and Implementing Total Maximum Daily Loads,* Robert Perciasepe, Assistant Administrator for Water, August 8, 1997), to clarify the listing requirements for the lists due in April, 1998. The best reading of this guidance and the *National Clarifying Guidance for 1998 State and Territory Section 303(d) Listing Decisions,* Robert H. Wayland III, Director, Office of Wetlands, Oceans and Watersheds, August 27, 1998) issued for the lists due in April, 1998, is that waterbodies are required to be listed and scheduled for establishment of TMDLs only if a pollutant was identified as the source of the impairment and that TMDLs are required only where the impairment or threat is directly attributable to a pollutant, such as nitrogen, copper or excessive sediment. *Proposed rule.* Today's proposal at § 130.25 clarifies that States, Territories and authorized Tribes must list waterbodies impaired or threatened by point sources only, a combination of point and nonpoint sources, and nonpoint sources only, including atmospheric deposition. The proposal also clarifies that waterbodies must be listed regardless of whether the impairment or threat is caused by individual pollutants, multiple pollutants or pollution from any source, including atmospheric deposition.

Listing Requirement: Point/Nonpoint Sources. Although some have argued to the contrary, section 303(d) provides ample authority to list waterbodies impaired by nonpoint sources of pollution and establish TMDLs for waterbodies impaired by nonpoint sources of pollutants. Looking first at the words of section 303(d), there is no express exclusion of nonpoint source impacted waterbodies from the statute's requirements. Section 303(d)(1)(A) requires identification of ''those waterbodies * * * for which effluent limitations required by section [301(b)(1) (A) and (B)] * * * are not stringent enough to implement any water quality standard. * * *'' Nowhere does the section say that nonpoint source impacted waterbodies need not be listed. While it is true that the effluent limitations required by section 301 apply only to point sources, this fact does not necessarily restrict the scope of section 303(d) to point source-only waterbodies.

In general, there are three categories of waterbodies that a State, Territory or authorized Tribe needs to consider for inclusion on its section 303(d) list. First, there are waterbodies impacted solely as a result of point sources. Second, there are waterbodies impacted by both point and nonpoint sources (''blended waterbodies''). Third, there are waterbodies impacted only by nonpoint sources. It is reasonable to read the language of section 303(d)(1)(A) to encompass all three categories of waterbodies.

Waterbodies in the first two categories (point source-only impacts and blended waterbodies) satisfy the section 303(d) listing criteria if those waterbodies do not meet standards (or are threatened) despite the existence of section 301 effluent limits on those waterbodies' point sources. Because those waterbodies do not meet standards (or are threatened), and because they have point source discharges feeding into them, it necessarily follows that existing section 301 limitations on those dischargers (if any) are not stringent enough to implement applicable water quality standards.

Waterbodies in the third category (i.e., those without point source dischargers on them) can also meet section 303(d)(1)(A)'s listing criteria. The first step would be a determination that such waterbodies are not meeting standards. If such a determination is made, it follows that such waterbodies must be listed. By definition such waterbodies have no point source dischargers on them, and, therefore, section 301-required effluent limits can never be stringent enough to implement applicable water quality standards. Therefore, such waterbodies meet the statutory criteria for listing found in section 303(d)(1)(A). Accordingly, it is reasonable for EPA to read the listing requirement language of section 303(d)(1)(A) as extending to nonpoint source-only impacted waterbodies.

The same is true of section 303(d)(1)(C) dealing with TMDLs. That section provides that each State shall establish for the waterbodies identified on a State's list TMDLs ''for those pollutants which the Administrator identifies under section [304] * * * as suitable for such calculation.'' Section 304(a)(2)(D) required EPA to publish ''for the purposes of section [303] * * * the identification of *pollutants* suitable for maximum daily load measurement correlated with the achievement of water quality objectives.'' (Emphasis added). EPA identified such pollutants in December 1978. At that time it said ''[a]ll pollutants, under the proper technical conditions, are suitable for the calculation of total maximum loads''. 43 FR 60665 (Dec. 28, 1978).

As with section 303(d)(1)(A), there is no express exclusion of nonpoint source waterbodies from the TMDL requirements of section 303(d)(1)(C). Assuming that section 303(d)(1)(A) lists cover nonpoint source waterbodies, TMDLs must also be established for pollutants in those waterbodies because—by its very terms—the reach of section 303(d)(1)(C) is coextensive with that of 303(d)(1)(A) (''shall establish for the waterbodies identified in paragraph (1)(A)'').

EPA's belief that section 303(d) applies to nonpoint sources is also consistent with the Clean Water Act's definition of pollutant. An examination of the Act ''as a whole'' supports an interpretation that Congress did not intend to limit the term ''pollutant'' to point sources. The relevant provisions of section 502(6) define the term ''pollutant'' as follows:

> The term *pollutant* means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

Section 319, a section that exclusively addresses nonpoint sources, provides clear evidence that Congress did not intend to limit the use of the term ''pollutant'' to point sources. The very first element of a state's section 319 plan is an ''identification of the best management practices and measures which will be undertaken to reduce *pollutant* loadings resulting from each category, subcategory, or particular nonpoint source. * * *'' section 319(b)(2)(A)(emphasis added). In addition, every year each State must report to EPA any ''reductions in nonpoint source *pollutant* loading and improvements in water quality. * * *'' section 319(h)(11)(emphasis added). Finally, in its report to Congress, EPA must also identify ''the progress made in reducing *pollutant* loads and improving water quality * * *'' as a result of nonpoint source focused activities carried out under section 319. section 319(m)(2)(D) (emphasis added).

In drafting section 319, it is clear that Congress understood that nonpoint sources could cause *pollutant* loadings to waterbodies. Indeed, it asked the States to identify measures to reduce those nonpoint pollutant loadings and required annual reports of any reductions. In the face of these directives, it is not reasonable to think that Congress somehow understood the section 502 definition of ''pollutant'' to apply narrowly to only point sources.

Other sections of the CWA also indicate that Congress felt quite comfortable with the idea that ''pollutants'' can come from nonpoint sources. *See* Section 320(b)(3) (estuary management conference shall ''develop the relationship between the inplace loads and point and nonpoint loadings of *pollutants* to the estuarine zone * * *'') (emphasis added); section 105(d)(1)(EPA shall develop ''waste management methods applicable to point and nonpoint sources of *pollutants* to eliminate the discharge of pollutants, including, but not limited to, elimination of runoff of pollutants and the effects of pollutants from inplace and accumulated sources'') (emphasis added); section 107(a) (in context of mine remediation projects, linking ''acid'' and ''sediment'' impacts to ''other *pollutants*'' without specifying that they must originate from point sources) (emphasis added); section 117(a)(4) (Chesapeake Bay Office shall determine ''impact of *pollutant* loadings of nutrients, chlorine, acid precipitation, dissolved oxygen, and toxic pollutants'' on Bay without specifying that such pollutants must originate from point sources) (emphasis added); section 119(c)(2)(F) (Long Island Sound Office shall study atmospheric deposition of acidic and other *pollutants* into Long Island Sound'' without specifying that such pollutants must originate from point sources) (emphasis added).

Pollutant/Pollution. Today's proposed rule requires States, Territories and authorized Tribes to list all waterbodies impaired or threatened by pollutants, as defined in 40 CFR 130.2(d), and pollution, as defined in 40 CFR 130.2(c). Section 303(d)(1)(A) requires that States, Territories and authorized Tribes identify all waterbodies for which certain specified effluent limits are not stringent enough to implement water quality standards. The focus of the section is on whether or not the water is meeting standards following application of effluent limits. There is no indication that, to be listed, the water must be impaired by a pollutant as opposed to some other form of pollution. Indeed, the section expressly states that, when assigning a priority ranking to listed waterbodies, the State, Territory or authorized Tribe must account for the severity of the waterbody's ''pollution.'' EPA interprets this to mean that a waterbody can be listed if it is impaired or threatened by either pollution or a pollutant.

EPA's interpretation is consistent with the broad goal articulated in section 101(a) of the CWA ''to restore and maintain the chemical, physical, and biological integrity of the nation's waterbodies.'' This consistency is evidenced by the fact that the above-stated goal is mirrored in the Act's definition of ''pollution'' in section 502(19), which is incorporated into the regulations at 40 CFR 130.2(c): ''the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.'' Accordingly, EPA interprets the statute to allow it to require that waterbodies be listed when any such alteration of their chemical, physical, biological, and radiological integrity causes them to be impaired or threatened. Such alteration can be caused by ''pollutants,'' as that term is defined in section 502(6) of the CWA, or any broader causes of impairment from pollution, such as low flow or degraded aquatic or riparian habitat.

Although the FACA Committee was not able to reach consensus on this issue, the committee noted on page 5 of its report that the TMDLs ''establish the CWA's primary mechanism for addressing water quality impairments'' and, of all CWA provisions, only the

TMDL provisions ''focus broadly on waterbodies that do not meet water quality standards, including beneficial uses.'' The FACA Committee also recognized that ''all stakeholders, including the general public, have a right to know about the health of their waterbodies and, especially, about waterbodies that are impaired and require corrective action.'' It is appropriate to have the section 303(d) list serve as a comprehensive accounting of waterbodies impaired or threatened by pollution and pollutants.

While EPA interprets section 303(d) to require identification of all waters not meeting water quality standards, whether caused by pollutants or pollution, EPA interprets section 303(d) to require that TMDLs only be established where a waterbody is impaired or threatened by a ''pollutant''. (See 130.32(a)). The term pollutant is defined in section 502(6) of the CWA and in the proposed 40 CFR 130.2(d) as follows:

> ''The term *pollutant* means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.'' [Omitted here are certain statutory exclusions.]

Section 303(d)(1)(C) expressly provides that, for listed waterbodies, States shall establish TMDLs ''for those pollutants which EPA has identified as suitable for such calculation''. Section 304(a)(2)(D) required EPA to publish ''for the purposes of section [303] * * * the identification of pollutants suitable for maximum daily load measurement correlated with the achievement of water quality objectives.'' EPA identified such pollutants in December 1978. At that time, EPA said that ''[a]ll pollutants, under the proper technical conditions, are suitable for the calculation of total maximum loads''. 43 FR 60665 (Dec. 28, 1978). The clear reference to ''pollutants'' in section 303(d)(1)(C), as well as in sections 303(d)(3) and 304(a)(2)(D), supports the conclusion that EPA is authorized to require that TMDLs be established only for pollutants as defined in section 502(6), and not for pollution.

EPA acknowledges an argument could be made that, while Congress was not as specific about its use of the word ''pollutant'' in section 303(d)(1)(A) dealing with listing as it was in section 303(d)(1)(C) dealing with TMDLs, the scope of a State's list should be the same as its obligation to do TMDLs. By that logic, only waterbodies impaired or threatened by pollutants would be included on a State's list. EPA disagrees with this position, not only because it believes its own interpretation of section 303(d) is more reasonable, but also because it sees great value in listing waterbodies impaired or threatened by both pollutants and pollution.

Threatened Waters. Today's proposal at § 130.25 retains the existing regulatory requirement that States, Territories and authorized Tribes list impaired and threatened waterbodies. To further clarify the scope of this requirement, EPA is also proposing at § 130.2(n) to define a threatened waterbody as one that currently meets water quality standards, but for which adverse declining trends indicate that standards will be exceeded by the next listing cycle.

The FACA Committee spent considerable time addressing this issue, both in terms of whether threatened waterbodies should be listed and, if so, how to define ''threatened waterbodies.'' They did not reach consensus on whether the TMDL regulations should require States to list threatened waterbodies. The FACA Committee recommended that ''threatened waterbodies be put on a discrete list for focused attention, with the goal of keeping them from becoming impaired.'' The Committee did not recommend that TMDLs be required for threatened waterbodies. The Committee did recommend that a watershed-based loadings analysis be performed for threatened waterbodies as soon as possible, consistent with the State's priority list, but at a minimum, before new or modified permits that allow increased discharges to a threatened waterbody or other actions that would contribute to increased pollution to a threatened waterbody over which the State has approval authority, are issued. The loadings analysis would not necessarily include all of the components of a TMDL for impaired waterbodies, but would have to provide for restoration so that the waterbody is no longer threatened.

EPA interprets section 303(d)(1)(A) to provide authority for EPA to require that states list threatened, as well as impaired, waterbodies. Pursuant to that section, each state must identify those waterbodies for which effluent limitations required by section 301(b)(1)(A) and (B) ''are not stringent enough to implement any water quality standard applicable to such waterbodies.'' In the case of ''threatened waterbodies'', data showing a declining trend in water quality may indicate that, although the waterbody currently attains water quality standards, it is not likely to do so by the time of the next listing cycle. That being the case, the State may determine that currently applicable effluent limitations are not stringent enough to implement water quality standards. If they were stringent enough, there would not be a declining water quality trend foreshadowing nonattainment before the next listing cycle. Rather than ignore such declining water quality data, the CWA gives EPA the authority to require that threatened waters be listed.

EPA's decision to propose that the list include threatened waterbodies is consistent with one of the CWA's fundamental goals—to protect water quality from deterioration. In addition, the inclusion of threatened waterbodies on State, Territorial and authorized Tribal lists reflects EPA's view that it is more desirable, both environmentally and economically, to protect waterbodies from possible impairment than to wait until they are impaired and then need to be restored. Through today's proposed comprehensive listing process, States, Territories and authorized Tribes can become aware of the threatened status of a particular waterbody and then initiate actions to prevent the waterbody from becoming impaired. EPA is specifying, consistent with the FACA recommendations, a definition of threatened waterbodies as likely to exceed water quality standards within the next two years when the determination that a waterbody is threatened is based on data that show a significant declining trend or knowledge of specific changes that would adversely impact water quality. In determining whether to list threatened waterbodies, states should consider information on known sources that have either recently been added or removed or are expected to be added or removed in order to determine if an apparent declining trend is likely to continue, or if a waterbody is likely to be impaired by the next listing cycle despite the absence of a trend.

Atmospheric Deposition. The FACA Committee was not able to reach consensus on how the TMDLs should address waterbodies impaired or threatened by atmospheric deposition. Consistent with EPA's view that the section 303(d) listing requirement applies to all sources of impairment and threat, today's proposal at § 130.25(b)(2) codifies existing EPA policy that States must list waterbodies impaired or threatened by atmospheric deposition. EPA recognizes that data, analytical approaches and models to establish TMDLs for pollutants originating from air deposition may not be immediately available, especially for pollutants subject to long range transport in the

atmosphere. EPA recommends that where additional time is needed to develop data, analysis, or models for air deposition of pollutants significantly contributing to a water quality impairment, States, Territories and authorized Tribes assign these waterbodies a low priority for establishment of TMDLs.

Relationship to Antidegradation Requirements in Water Quality Standards. Today's proposal (§ 130.26) also clarifies how State, Territorial and authorized Tribal antidegradation policies affect the identification and listing of impaired and threatened waterbodies under section 303(d). Antidegradation policies and associated implementation procedures are an essential part of State, Territorial and authorized Tribal water quality standards programs and are required under 40 CFR 131. Antidegradation policies help ensure that water quality necessary to support existing uses (Tier 1) and water quality which is better than needed to support protection and propagation of fish, shellfish and wildlife and recreation in and on the water (Tier 2) is maintained unless through a public process, a decision has been made to allow some decline in water quality. Antidegradation policies also identify and protect waterbodies of exceptional recreational and ecological significance. (Tier 3)

The purpose of section 303(d) is to identify impaired and threatened waterbodies while the purpose of antidegradation policies is to prevent deterioration of existing levels of good water quality. There is a relationship, however, between section 303(d) listing requirements and antidegradation policies.

Tier 3 waterbodies are waterbodies of exceptional recreational or ecological significance. Generally, when a State, Territory or authorized Tribe has identified waterbodies as Tier 3, no decline in water quality is allowed. Today's proposal requires that decline in water quality for Tier 3 waterbodies represents an impairment for the purpose of section 303(d). These waterbodies must be identified and listed.

Tier 2 waterbodies are waterbodies for which existing water quality is better than necessary to support propagation of fish, shellfish, wildlife and recreation. Since existing water quality is better than required, these waterbodies do not need to be listed as impaired under section 303(d). Any decline in existing water quality is not authorized unless an antidegradation analysis is completed as required in 40 CFR 131. Tier 2 waterbodies may, however, be threatened and must be listed when adverse trend data and information indicate that a designated use will not be maintained by the time of the next listing cycle.

All waterbodies are subject to Tier 1 protection. Generally, Tier 1 waterbodies do not exceed section 101(a)(2) goals or do not have additional assimilative capacity to receive additional amounts of a pollutant without exceeding the existing use. Tier 1 waterbodies are impaired and must be listed if the designated use is not being attained. In some cases, Tier 1 waterbodies may be listed if existing uses have been identified pursuant to 40 CFR 131.3. An existing use is a use that has actually occurred since November 28, 1975 (when the water quality standards regulation was published) or where water quality is suitable to allow such a use to occur. States, Territories and authorized Tribes must incorporate existing uses into their designated uses pursuant to 40 CFR 131.10(i). The water quality standards regulation provides, however, that a demonstration of an existing use different than a designated use may be made to the State, Territory or authorized Tribe. In the case that such a demonstration is made by a member of the public, a waterbody must be listed if the existing use is more protective than the designated use. EPA expects that most Tier 1 waterbodies identified as impaired and listed on the section 303(d) list will be listed on the basis of designated uses.

Options considered. In developing today's proposal, EPA considered other options for defining the scope of the list. EPA considered whether to limit the list to impaired waterbodies and not require States, Territories and authorized Tribes to also list threatened waterbodies. EPA recognized that this option might allow States, Territories and authorized Tribes to focus the limited resources for TMDLs more effectively on addressing existing impairments. EPA did not propose this option because EPA believes it is inconsistent with the goals of the CWA and a list that serves as a comprehensive public accounting of impaired and threatened waterbodies. EPA also considered whether to allow States, Territories and authorized Tribes not to list waterbodies impaired or threatened by nonpoint sources only, as well as waterbodies impaired or threatened by atmospheric deposition. EPA did not propose these options because they are inconsistent with EPA's interpretation of section 303(d) and the goals of the CWA. Finally, when deciding on the proper scope of the list, EPA considered whether to require States, Territories and authorized Tribes to establish TMDLs for all waterbodies impaired or threatened by either pollutants or pollution. Based on EPA's interpretation that section 303(d) requires TMDLs to be established only where a waterbody is impaired or threatened by pollutants, today's action does not propose that TMDLs be established for waterbodies impaired or threatened by pollution.

Comments sought. EPA solicits comments on any or all aspects of the proposal, including options considered. EPA solicits comments on the proposed requirement that States, Territories and authorized Tribes must list waterbodies impaired or threatened by pollution and by pollutants. EPA also seeks comment on today's proposal to retain the existing regulatory requirement to list threatened bodies. In addition, EPA seeks comment on today's proposal to codify existing EPA guidance to require States, Territories and authorized Tribes to list waterbodies impaired or threatened by an unknown pollutant and by all sources, including nonpoint sources only and atmospheric deposition. EPA seeks comment on today's clarification that TMDLs must be established only for waterbodies impaired or threatened by pollutants. Finally, EPA seeks comments on the listing requirements for impaired and threatened waterbodies stemming from State, Territorial, and authorized Tribes' antidegradation policies.

c. Required Components of the List

Existing requirements. The existing regulations (at 40 CFR 130.7(b)) require that the list developed under section 303(d) of the CWA consist of ''water quality-limited segments still requiring TMDLs,'' but recognize that certain waterbodies, while impaired or threatened, do not require TMDLs and therefore need not be included on the list. The existing regulations (at 40 CFR 130.7(b)(1)) identify such waterbodies as those that are expected to attain or are already attaining water quality standards following the application of best practicable control technology for point sources and secondary treatment for publicly owned treatment works, more stringent effluent limitations required by either Federal, State or local authorities, or other required pollution controls (such as best management practices).

Existing regulations do not address the question of when States, Territories and authorized Tribes can remove previously listed waterbodies from their lists. Current guidance (*Guidance for 1994 Section 303(d) Lists,* Geoffrey H. Grubbs, Director, Assessment and Watershed Protection Division,

November 26, 1993 and *National Clarifying Guidance for 1998 State and Territory Section 303(d) Listing Decisions*, Robert H. Wayland III, Director, Office of Wetlands, Oceans and Watersheds, August 27, 1997) addresses the issue by identifying two circumstances that would justify removing previously listed waterbodies. These circumstances are: (1) if water quality standards are being attained or are expected to be attained within two years, or (2) if, upon re-examination, the original basis for listing the waterbodies is determined to be inaccurate. In addition, current guidance (*Guidance for 1994 Section 303(d) Lists*, Geoffrey H. Grubbs, Director, Assessment and Watershed Protection Division, November 26, 1993) gives States, Territories and authorized Tribes the option of removing previously listed waterbodies after EPA approves a State-established TMDL.

Proposed rule. Today's proposal (at 40 CFR 130.27) eliminates the term ''water quality-limited segments still requiring TMDLs'' from the regulations and broadens the scope of the list. Today's proposal requires States, Territories and authorized Tribes to list *all* impaired or threatened waterbodies, regardless of whether the waterbody is expected to attain water quality standards following the application of technology-based controls required by section 301 and 306 of the CWA, more stringent effluent limitations, or other required pollution controls. As already discussed, this includes waterbodies impaired or threatened by individual pollutants, multiple pollutants and pollution from all sources, waterbodies impaired or threatened by unknown pollutants or pollution and waterbodies impaired or threatened by atmospheric deposition. The proposal also clarifies that States, Territories and authorized Tribes must list waterbodies impaired or threatened by point sources, a combination of point and nonpoint sources only.

Today's proposal at § 130.27 establishes a specific format for States, Territories, and authorized Tribes follow which organizes the types of waterbodies included on the list and clearly identifies which waterbodies require the establishment of TMDLs. The proposed rule requires that State, Territorial and authorized Tribal lists consist of four parts:

- Part 1—Waterbodies impaired or threatened by one or more pollutants or unknown cause as defined by 40 CFR 130.2(d). A TMDL is required for waterbodies on this part of the list.
- Part 2—Waterbodies impaired or threatened by pollution as defined by 40 CFR 130.2(c) but not impaired by one or more pollutants. A TMDL is not required for waterbodies on this part of the list.
- Part 3—Waterbodies for which EPA has approved or established a TMDL and water quality standards have not yet been attained.
- Part 4—Waterbodies that are impaired, for which implementation of best practicable control technology for point sources and secondary treatment for publicly owned treatment works or controls enforceable by State, Territorial, authorized Tribal or Federal law or regulation are expected to result in attainment of water quality standards by the next listing cycle. A TMDL is not required for waterbodies on this part of the list. If a waterbody on Part 4 does not attain water quality standards by the time the next list is due to EPA, it must be included on Part 1 of the list.

Today's proposal is meant to ensure that all impaired and threatened waterbodies are identified and placed on the list. EPA does not expect States, Territories, and authorized Tribes to list waterbodies for which there is no existing and readily available data and information that indicates the existence of an impairment or threat. EPA does expect, however, the State, Territory, or authorized Tribe to list impaired or threatened waterbodies if such data demonstrates impairment or threat and believes a pollutant or pollution is the cause of the impairment or threat. If the State, Territory, or authorized Tribe believes a pollutant is the cause of the impairment or threat, but does not know the specific identity of the pollutant, the waterbody must be included on Part 1 of the list and scheduled for the establishment of a TMDL. EPA expects that the pollutant causing the impairment will be identified as part of establishing the TMDL. EPA anticipates, in some cases, that new and additional data and information may need to be generated to identify the cause of the impairment. If the cause of the impairment or threat is identified as pollution, no TMDL is required and the waterbody should be placed on Part 2 of the list.

This requirement to list where the exact pollutant is unknown is especially important with regard to waterbodies identified as impaired or threatened on the basis of biological data or screening methods. Unlike impairments or threats attributed to physical or chemical data and information, in which the pollutant or pollution is intrinsically known or evident, impairments or threats identified by the use of biological data or screening methods may not be as easily traced back to the underlying cause. A chemical pollutant, for example, that exceeds in-stream criteria is generally identifiable. The pollutant or pollution causing biological impairment, on the other hand, may not be readily apparent. A bioassessment of a stream may indicate unhealthy aquatic populations which fail to attain or maintain the designated use. The bioassessment, however, generally does not indicate the pollutant causing the impairment. EPA stresses that the first step in establishing a TMDL for these kinds of impairments is identifying the cause of the impairment and the pollutant for which the TMDL must be established. Requiring waterbodies which are impaired or threatened but for which the cause of the impairment or threat is unknown to be listed on part 1 of the list will provide an incentive for States, Territories and authorized Tribes to expeditiously identify the pollutant causing the impairment or threat at the time when that waterbody is placed on the list. If the cause of the impairment is determined to be pollution, no TMDL is required and the waterbody should be placed on part 2 of the list. This approach is consistent with EPA's evolving approach for the use of biological assessments and criteria.

Today's proposal at § 130.29 adopts the FACA Committee's recommendations that waterbodies remain listed until water quality standards are attained, and that a previously listed impaired waterbody may be removed from the list only when new data or information indicate that the waterbody has attained water quality standards or that the waterbody was incorrectly listed. Similarly, the proposed rule specifies that a previously listed threatened waterbody may be removed from the list when new data or information indicate that the waterbody is no longer threatened or that the waterbody was incorrectly listed. EPA adopted these FACA Committee recommendations because it believes that the section 303(d) list of impaired and threatened waterbodies is a comprehensive accounting of where the water quality problems in any State, Territory or authorized Tribe are. Retaining waterbodies on the list until water quality standards are attained provides a way to measure progress for program managers and other stakeholders.

EPA proposes that additional waterbodies be included on Part 4 of the list. These waterbodies are waterbodies for which implementation of best practicable control technology for point sources, secondary treatment for publicly owned treatment works, or controls enforceable by State or Federal law or regulation are expected to result in attainment of water quality standards by the next listing cycle. Some examples of enforceable controls which may achieve water quality standards are state

regulations or local ordinances requiring erosion control, state laws requiring manure management practices, NPDES controls for point sources based on best available technology, and Habitat Conservation Plans adopted under the Endangered Species Act (ESA). EPA believes that it is appropriate to provide time to allow controls such as these to attain water quality standards, especially in light of the large numbers of TMDLs that need to be established nationally.

Section 303(d)(1)(C) provides that each State, Territory or authorized Tribe shall establish TMDLs for waterbodies identified on the § 303(d) list ''for pollutants which the Administrator identifies * * * as suitable for such calculation.'' Section 304(a)(2)(D) required EPA to publish ''for purposes of section [303] * * * the identification of pollutants suitable for maximum daily load measurement correlated with the achievement of water quality objectives.'' EPA identified such pollutants in December, 1978. At that time it said, ''all pollutants, under proper technical conditions, are suitable for calculation of total maximum daily loads.'' (43 FR, 60665, Dec. 28, 1978)

The current proposal does not change the determination that all pollutants, under proper technical conditions, are suitable for calculation of TMDLs. The proper technical conditions for TMDL calculations are that data, analyses, or models are available or can reasonably be developed to establish a TMDL consistent with the requirements proposed today. Since EPA considers all pollutants suitable for calculation in nearly all situations, today's proposed rule does not enumerate or identify specific situations in which data, analyses or models are not available to establish TMDLs. EPA could, however, identify and describe situations, either in the final rule or in guidance, for which the proper technical conditions are not available to establish TMDLs. One example of a situation that EPA might identify is waters impaired primarily by air deposition of pollutants. If EPA were to identify specific situations where the proper technical conditions for TMDLs are not available, EPA could also specify that these waters could be included as a separate part of the list to be reviewed at each review cycle by the State and approved by EPA. EPA asks for comment on the advisability of identifying specific situations where the proper technical conditions for establishment of a TMDL are not met, and what those specific situations might be.

Other options considered. In developing today's proposal, EPA considered other ways to format the list. The options EPA considered focused on whether or not to divide the list into a number of different parts or segments. EPA decided to create a segmented list as a way to improve and better organize State and EPA management of the section 303(d) list and to provide important information to the general public and other stakeholders about the status of the listed waterbodies and the reasons for listing them. EPA also considered various options when deciding the appropriate categories for segmenting the list. One option EPA considered was whether to include a category for waterbodies for which there is some evidence of threat or impairment, but which would not be immediately scheduled for establishment of TMDLs. Waters could have been placed in this category if the State, Territory or authorized Tribe committed to collect additional data and information or conduct additional monitoring necessary to support establishment of TMDLs. EPA did not propose this option because it concluded that there was no need to delay scheduling waterbodies for TMDL establishment based on less than conclusive evidence of impairment or threat since any additional needed data or information could be obtained during the period between listing and State, Territorial and authorized Tribal establishment of the TMDL.

EPA also considered whether to continue the current regulatory requirement that gives States, Territories and authorized Tribes the option not to list waterbodies that fail to meet water quality standards, but for which other pollution control requirements or actions are planned or are being implemented that are expected to provide for standards attainment. The FACA Committee did not reach consensus on this issue. EPA did not propose this option because it is inconsistent with its view that the section 303(d) list should serve as a comprehensive public accounting of all waterbodies impaired or threatened by pollution and pollutants, irrespective of the tool or mechanism being used to achieve standards.

EPA also concluded that allowing waterbodies to be removed from State, Territorial or authorized Tribal lists once a TMDL has been approved by EPA is inconsistent with our belief that State, Territorial and authorized Tribal lists provide for a comprehensive public accounting of all waterbodies that are not attaining or are not expected to attain water quality standards. In addition, EPA agreed with the FACA Committee that requiring waterbodies to remain listed until they attain standards could serve as an incentive to establish and implement the TMDL, resulting in the restoration of impaired waterbodies.

Comments sought. EPA seeks comments on today's proposal to create a new format for the list of impaired and threatened waterbodies and to broaden the scope of the list to include waterbodies that are expected to attain standards after the application of technology-based controls required by sections 301 and 306 of the Act, more stringent effluent limitations, or other required pollution controls. EPA also seeks comment on our proposed criteria for removing waterbodies from the list. EPA solicits comments on any or all aspects of the proposal, including the options considered. EPA also asks for comment on the advisability of identifying specific situations where the proper technical conditions for establishment of a TMDL are not met, and what those specific situations might be.

d. Assigning Priorities to Listed Waterbodies

Existing requirements. Section 303(d) of the CWA and EPA's existing regulations require that States, Territories and authorized Tribes assign a priority ranking to each listed waterbody. Existing regulations specify that the priority ranking must include an identification of the pollutant(s) causing or expected to cause each waterbody's impairment and an identification of the waterbodies targeted for TMDL development in the next two years. Section 303(d) requires States, Territories and authorized Tribes to determine priority rankings by taking into account the severity of the pollution and the uses to be made of the waterbody. The statute does not explain how these factors should be taken into account and the current regulation does not expand on the statutory language. EPA guidance (*Guidance for Water Quality-based Decisions: The TMDL Process,* EPA 440/4–91–001, April 1991) acknowledges discretion in developing and assigning priority rankings and suggests a number of factors that States, Territories and authorized Tribes may consider, based on our belief that the statutory factors are not exclusive. These factors include immediate programmatic needs, vulnerability of particular waterbodies as aquatic habitats, recreational, economic and aesthetic importance of particular waterbodies, degree of public interest and support and State, Territorial

authorized Tribal, or national policies and priorities.

Proposed rule. Today's proposal at § 130.28 affirms the existing statutory and regulatory requirement that States, Territories and authorized Tribes assign a priority ranking to each listed waterbody. It also includes a new requirement that States, Territories and authorized Tribes assign either a ''high,'' ''medium,'' or ''low'' priority to each listed waterbody and pollutant combination on Part 1 of the list. States, Territories and authorized Tribes must assign a ''high'' priority to impaired waterbodies with water quality standards designated uses as public drinking water supplies where the impairment is contributing to a violation of an MCL, and for waterbodies in which species listed as endangered or threatened under section 4 of the ESA unless the State, Territory, or authorized Tribe shows that the impairment does not affect the listed species. Today's proposal maintains the existing regulations' requirement that the pollutant, pollutants, and/or pollution causing or expected to cause impairment be identified for each listed waterbody. Identification of each pollutant or type of pollution that causes or contributes to impairment of a waterbody is a critical part of the listing process because it sets the stage for TMDL development and helps the State, Territory and authorized Tribe determine appropriate priorities and schedules. Today's proposal, however, eliminates the current requirement that the priority ranking include an identification of the waterbodies targeted for TMDL development in the next two years. This is because EPA is proposing (at 40 CFR 130.31) a requirement that States, Territories and authorized Tribes develop a comprehensive schedule for establishing TMDLs for all waterbodies and pollutants on Part 1 of the list. A separate requirement to identify the waterbodies for which TMDLs will be developed over the next two years is unnecessary.

The priority ranking of impaired waterbodies and identification of the pollutant(s) or pollution causing or expected to cause each waterbody's impairment are important elements of each State list. The CWA provides States, Territories and authorized Tribes broad discretion in deciding how to rank their listed waterbodies. Adding a requirement that States must assign waterbodies a priority ranking of either ''high,'' ''medium,'' or ''low'' will enhance national consistency and help States and the public understand the relative significance of establishing TMDLs on specific waterbodies. EPA is proposing that all impaired and threatened waterbodies and pollutant combinations for which the impairment contributes to a violation of an MCL in waters where the designated use is public drinking water supply or in which a threatened or endangered species is present, be assigned a high-priority ranking by States, Territories and authorized Tribes. However, if a State, Territory or authorized Tribe shows that the impairment does not affect threatened or endangered species, it is not required to assign a high priority to that waterbody.

As noted earlier in section 4.a. of this preamble, States, Territories and authorized Tribes are required to provide EPA with a methodology illustrating how they considered the severity of the impairment and the use of the waterbody in identifying impaired and threatened waterbodies. Today's proposal requires the same type of illustration regarding the setting of priorities.

Finally, today's proposal provides, at §§ 130.28(d) and (e), that States, Territories and authorized Tribes may consider additional factors such as efficiencies gained by establishing TMDLs for all pollutants that cause or contribute to impairment of a listed waterbody; establishing TMDLs for single or multiple pollutants in multiple waterbodies on a watershed scale; the vulnerability of particular waterbodies; the value of particular waterbodies; the recreational, economic and aesthetic importance of particular waterbodies; the cost and complexity of establishing and implementing TMDLs; degree of public interest and support; and State, Territorial or authorized Tribal policies in setting priorities. All of the above factors are important and they should be considered when setting priorities. Consideration of these factors will help States, Territories, authorized Tribes and stakeholders set priorities efficiently and in recognition of larger environmental and community needs.

Section 130.32(b) provides that States, Territories and authorized Tribes must establish TMDLs in accordance with the priority rankings established in accordance with § 130.28. EPA does not, however, intend to disapprove an otherwise approvable TMDL simply because it was not developed in accordance with a State's, Territory's or authorized Tribe's schedule or the priority ranking assigned to the waterbody on the section 303(d) list. EPA does not believe disapproving such a TMDL is required by section 303(d) or consistent with the goal of implementing TMDLs which conform with applicable water quality standards. EPA may, however, consider the extent to which a State, Territory or authorized Tribe is developing TMDLs that are not in accordance with its priority rankings and schedule when making a decision under § 130.36(a) to step in and establish TMDLs. For example, if a State, Territory or authorized Tribe is ignoring its high priority waters and submitting too many low or medium priority TMDLs, EPA may decide to establish some high priority TMDLs itself.

Other options considered. In developing today's proposal, EPA considered other options for addressing the statutory requirement for priority ranking. EPA considered proposing a more prescriptive approach than the existing regulations and specifying factors that States, Territories or authorized Tribes would have to consider when determining whether to rank a particular waterbody as high, medium or low. The factors considered include the type and individual characteristics of the pollutant, e.g., toxic chemical, sediment; the use of the waterbody, e.g., drinking water, cold water sport fishery; the degree of impairment, e.g., numeric rankings; the difficulty and/or time involved in establishing the TMDL, e.g., most difficult TMDLs established first or in the alternative ranked lower to allow more time for the technical work necessary to establish a TMDL; or the amount of time expected to attain or maintain water quality standards. EPA also considered deferring entirely to State discretion on deciding how to rank waterbodies and not even requiring a basic high, medium or low ranking. In selecting the approach proposed today, EPA also considered the FACA Committee's recommendations to address this issue in guidance and balanced the importance of national consistency with the need for State latitude in setting priorities. EPA has determined that it is appropriate to require States to assign rankings of high, medium or low priority to each listed waterbody. EPA also considered not specifically requiring that waterbodies with designated uses as public water supplies in which there is a violation of an MCL or in which a threatened and endangered species is present be designated ''high'' priority. EPA proposes to address these waters specifically because it is important that these waterbodies be scheduled for TMDL establishment as soon as possible and EPA wanted to make sure that human health and endangered and threatened species concerns were

appropriately considered by all the States, Territories and authorized Tribes. EPA also considered the option of making human health and species concerns one (but not a determinative) factor in deciding whether to rank a waterbody in the ''high'' category.

EPA also considered whether to retain the current regulatory requirement that States, Territories and authorized Tribes identify the waterbodies targeted for TMDL establishment over the next two years in lieu of a new requirement that States, Territories and authorized Tribes develop a comprehensive schedule for establishing TMDLs for all waterbody and pollutant combinations on Part 1 of the list. However, as explained in section 4.e, below, EPA agreed with the FACA Committee's recommendation for a regulatory requirement that States, Territories and authorized Tribes develop overall schedules for TMDL establishment and today proposes to delete the targeting requirement.

EPA also considered providing different TMDL priority ranking requirements for impairments or threats resulting from ''extremely difficult to solve'' problems. An example impairment of this type is contaminated sediments which often result from the legacy of past introduction of pollutants. In many cases, the pollutant causing the impairment or threat is no longer being discharged. Allocations and cleanup may be difficult and require additional time to establish TMDLs or attain or maintain water quality standards. EPA did not propose that extremely difficult to solve problems be treated any differently because waterbodies with these types of impairments may require action sooner, rather than later, particularly when they meet the high priority requirements established by the proposal.

Comments sought. EPA seeks comment on today's proposal to require States, Territories and authorized Tribes to assign a high, medium, or low priority to each listed waterbody and delete the current targeting requirement. EPA seeks comments on requiring that impaired waterbodies with designated uses as public drinking water supplies and for which there is a violation of an MCL due to the impairment be ranked as high-priority for establishment of TMDLs. EPA also seeks comments on requiring that impaired waterbodies with endangered and threatened species present be ranked as high-priority for establishment of TMDLs, unless a State, Territory or authorized Tribe shows that the impairment does not affect the species. EPA seeks comment on what types of impairments, if any, should be considered difficult to solve and whether these types of impairments should be treated differently as priorities for establishing TMDLs are set. It also seeks comments on the other options considered and any alternatives for ensuring that human health and aquatic species concerns be given appropriate weight in making listing decisions. EPA also seeks comment on whether to allow the States, Territories and authorized Tribes to consider factors in addition to the statutory factors in establishing priority rankings. EPA solicits comments on any or all aspects of the proposal, including the options considered. After considering all comments received and any additional information that may become available, EPA may include any of the options discussed here in the final rule.

e. Establishing a Schedule for TMDL Development

Existing requirements. Existing statutory and regulatory requirements do not call for States to develop or submit to EPA a schedule for developing TMDLs for all listed waterbodies. Current regulations simply require that States identify, within their priority rankings, those waterbodies for which TMDLs will be targeted for development over the next two years.

The FACA Committee strongly endorsed a regulatory requirement that States, Territories and authorized Tribes establish TMDLs according to an expeditious schedule. One of the reasons for the committee's recommendation is the historically low numbers of TMDLs established by States, Territories and authorized Tribes. In reaching agreements with some of the plaintiffs in recent litigation over TMDLs, EPA has recognized the importance of timely TMDL establishment and has committed to ensuring the establishment of TMDLs for all listed waterbodies within time frames similar to that recommended by the FACA Committee.

In August 1997, EPA's Assistant Administrator for Water issued a policy memorandum specifically asking States, Territories and authorized Tribes to develop 8–13 year schedules for establishing TMDLs for all listed waterbodies, beginning with the lists submitted to EPA in 1998. The August 1997 policy memorandum also described several factors that States should consider in developing their schedules. These factors, echoed in part by the FACA Committee's recommendations, include: the number of waterbodies on a list, including the length of river miles and number of lake acres impaired or threatened; the number and complexity of TMDLs to be established; the availability of data or models; and the relative significance of the environmental harm or threat. The FACA Committee recommended that EPA regulations require States, Territories and authorized Tribes to develop expeditious schedules of not more than 8–15 years for establishing TMDLs for listed waterbodies.

Proposed rule. Today's proposal, at § 130.31, eliminates the current regulatory requirement that States, Territories and authorized Tribes, in their priority rankings, identify those waterbodies for which TMDLs will be established over the next two years. EPA is today affirming its August 1997 policy direction and the FACA Committee's recommendation and is requiring that States develop comprehensive schedules for establishing TMDLs for all waterbodies included on Part 1 of the list (as described in section 4.c, above). Today's proposal requires that such schedules be as expeditious as practicable, provide for a reasonable pace of establishing TMDLs over the life of the schedule and not extend beyond 15 years. In addition, today's proposal recommends that TMDLs for high priority waterbody and pollutant combinations on Part 1 of the list should be scheduled for establishment before medium and low priority waterbodies. Setting an overall time requirement for TMDL establishment, as well as requiring a reasonable pace of TMDL establishment over the duration of the schedule, will encourage timely, concerted action by States, Territories and authorized Tribes leading to increased numbers of approved TMDLs.

The proposed requirement to establish a schedule for TMDL development is consistent with the language of section 303(d), which requires States to submit TMDLs for listed waterbodies beginning 180 days after the Administrator identifies the pollutants suitable for TMDL calculation, and ''from time to time'' thereafter. The Act does not define ''from time to time,'' and therefore EPA today proposes to define that term to mean submission of TMDLs at a reasonable pace over no more than the next fifteen years. In addition, EPA proposes that State, Territorial and authorized Tribal schedules should provide for establishment of high-priority TMDLs before TMDLs are established for medium and low-priority waterbodies. It is reasonable to expect States, Territories and authorized Tribes to establish TMDLs for high priority waterbodies on Part 1 of their lists before establishing TMDLs for lower priority waterbodies. While the number

of such waterbodies will differ from State to State, as will complexity of TMDL development and resource availability, the proposed provision should allow sufficient time for even those States with a relatively large number of high-priority waterbodies on Part 1 of their lists to establish TMDLs for waterbodies consistent with the requirements of section 303(d) that priority rankings take into account the uses to be made of waterbodies and the severity of the impairment when setting priorities for establishing TMDLs.

Today's proposal recognizes the statutory requirement that States, Territories and authorized Tribes assign a priority ranking to each listed waterbody. EPA recognizes that there are a number of ways that States, Territories and authorized Tribes may schedule TMDLs for establishment and implementation. These include focusing on waterbodies concurrently that are impaired by a particular pollutant or category or subcategory of sources or that share common ecosystem characteristics. EPA intends the prioritization and scheduling provisions in today's proposal to be flexible enough to accommodate such considerations.

EPA also recognizes and supports the watershed approach, under which States, Territories, and authorized Tribes may choose to establish all TMDLs in the same watershed at the same time. EPA strongly supports the watershed approach, but wants to ensure that States, Territories, and authorized Tribes do not depart too far from their priority rankings. EPA invites comment on the best way to integrate the statutory requirement for priority rankings with the watershed approach.

EPA recommends that States, Territories and authorized Tribes adopt a goal to establish TMDLs for all high-priority waterbodies within five years. EPA considered the FACA Committee recommendation that all high-priority TMDLs be required to be established within five years. Today's proposal, however, reflects that many States, Territories and authorized Tribes will have more high-priority waterbodies than can reasonably be expected to be established within five years based on available resources. EPA also understands that it may not make sense for States, Territories and authorized Tribes to individually schedule every TMDL, especially those with medium or low priority. States, Territories and authorized Tribes may schedule groups of TMDLs, on a watershed or some other appropriate basis, for TMDLs to be established in later years of the schedule.

Other Options Considered. In developing today's proposal, EPA considered several options. For example, EPA considered maintaining the current regulatory requirement that States, Territories and authorized Tribes identify only those waterbodies for which TMDLs will be developed over the next two years, and not requiring States to develop an overall schedule for TMDL establishment. EPA did not propose this option, even though it is often difficult to estimate the amount of time needed to develop TMDLs, especially when lists may include hundreds of impaired or threatened waterbodies. It is desirable for States, Territories and authorized Tribes to plan, on a long-term basis, for the establishment of all needed TMDLs. Moreover, many States, Territories and authorized Tribes have adopted, or are moving toward adopting, a rotating basin or watershed approach to water quality management. Under such an approach, States, Territories and authorized Tribes generally work sequentially through each of their basins on a five year cycle. They may collect data in a basin in the first year, analyze the data in the second year to assess the water quality in the basin, establish TMDLs and other management strategies in the third year, implement TMDLs and management strategies in the fourth year, and monitor for progress in the fifth year. Developing an overall schedule for TMDL establishment allows States, Territories and authorized Tribes to ensure compatibility between their rotating basin approaches and TMDL establishment.

Comments sought. EPA seeks comments on the proposed approach to require States, Territories and authorized Tribes to develop schedules for the establishment of TMDLs for all waterbodies on Part 1 of the list. EPA also seeks comments on the proposed requirement that States, Territories and authorized Tribes should schedule all high priority TMDLs for establishment before establishing TMDLs for medium and low-priority waterbodies. EPA solicits comments on any or all aspects of the proposal, including the options considered and may adopt any of the options discussed here in the final rule.

f. Submission of Lists, Priority Rankings, Listing Methodologies, and Schedules to EPA

Existing requirements. The statute and existing regulations require States to submit their lists to EPA for review and approval. Section 303(d) provides EPA with 30 days from the date of a State's submittal to either approve or disapprove the list. If EPA disapproves the list, EPA has an additional 30 days to establish the list. Existing regulations specify that the lists submitted by States to EPA for review must include the identification of the pollutant or pollutants causing or expected to cause the impairment or threat, the priority ranking of listed waterbodies, and the waterbodies identified for TMDL development over the next two years. Existing regulations also require States, Territories and authorized Tribes to submit to EPA their listing methodology; existing regulations do not, however, provide for EPA review and approval or disapproval of the methodology. Under the existing regulations, State, Territorial and authorized Tribal lists are to be submitted to EPA every two years, on April 1 of every even-numbered year.

Proposed rule. Today's proposal at 40 CFR 130.27(b) maintains the existing regulatory requirement that State, Territorial and authorized Tribal waterbody lists identify the pollutant(s) and/or pollution causing or expected to cause the impairment or threat, and the priority rankings of waterbody/pollutant combinations. Lists of impaired and threatened waterbodies must be submitted to EPA for review and approval or disapproval. As required by the statute, EPA will have 30 days to review and approve or disapprove each list. Today's proposal, at § 130.30(e), provides that EPA may establish a list of impaired and threatened waterbodies, including pollutant/pollution combinations and priority rankings, if a State, Territory or authorized Tribe asks EPA to do so, or if EPA determines that a State, Territory or authorized Tribe has not or is not likely to establish such list consistent with the schedule specified in § 130.30(a). As discussed later in this preamble, EPA believes it has authority under section 303(d) of the Clean Water Act to establish TMDLs if asked to do so, or if it determines that States, Territories, or authorized Tribes have not or are not likely to establish such TMDLs consistent with their schedules. EPA believes that the same rationale articulated later in the preamble in support of its authority, under certain circumstances, to establish TMDLs also applies to establishment of lists of impaired waters.

EPA anticipates exercising its discretionary authority to establish lists of impaired waterbodies on a case-by-case basis taking into account a variety of factors, including whether the State, Territory or authorized Tribe intends to submit a list at all, how late the State's, Territory's or authorized Tribe's list will be, any explanations offered by the

State, Territory or authorized Tribe for missing the submission deadline, and whether EPA has reason to believe the State's, Territory's, or authorized Tribe's list will be seriously flawed when it is submitted. For example, EPA does not expect that it will automatically decide to establish a list for a State, Territory or authorized Tribe just because the State, Territory or authorized Tribe may have missed the list-submittal deadline contained in § 130.30(a). However, if the State, Territory or authorized Tribe misses its § 130.30(a) deadline and, following inquiry from EPA, is not able to provide assurances that its list of impaired waters will be submitted for review within a reasonable period of time, EPA may determine to exercise its discretionary authority to establish the list itself. If, on the other hand, EPA concludes that the State, Territory, or authorized Tribe is making a ''good faith'' effort to complete list and submit it to EPA for review, EPA may decide not to establish a list of impaired waters for the State, Territory or authorized Tribe. EPA invites comment on its proposal to expressly assert in regulations its discretionary authority to establish lists of impaired waters and on the factors EPA should consider in exercising that authority.

EPA is clarifying by the use of the term ''order'' that its listing actions are informal adjudications and not rulemaking actions under the Administrative Procedure Act. Today's rule, at § 130.30(d), also requires EPA to notify the public in the **Federal Register** and in a newspaper of general circulation of its actions and request public comment for at least 30 days. EPA will send any portion of the list that it has modified to the State for incorporation into its water quality management plan.

Today's proposal, at § 130.24, also maintains the existing regulatory requirement that States, Territories and authorized Tribes must submit their listing methodologies to EPA . Under today's proposal States, Territories and authorized Tribes must submit their methodologies to EPA nine months prior to the deadline for submission of the list. As in the existing regulations, the proposal provides that EPA will review and may provide the State, Territory and authorized Tribe with comments on the methodology. EPA will not take any approval or disapproval action on the State, Territorial or authorized Tribal methodology.

EPA is not proposing at this time to approve or disapprove individual listing methodologies. EPA does recognize that the integrity of State, Territorial and authorized Tribal lists is strongly related to an explicit and deliberate approach to identifying impaired and threatened waterbodies. Requiring States, Territories and authorized Tribes to provide EPA and the public with the listing methodology prior to submission of the list will lead to more consistent, better defined listing decisions. In addition, submission of State listing methodologies to EPA prior to submission of the list will provide EPA and States, Territories and authorized Tribes with an opportunity to discuss exactly how impaired and threatened waterbodies are identified. These discussions will substantially reduce questions and comments at the time the section 303(d) list is submitted to EPA for action. EPA recognizes that the methodologies submitted nine months prior to the lists may be revised in response to feedback from the public or EPA, or issues and concerns that may arise as the methodologies are actually used to develop the lists. EPA is not proposing to approve or disapprove State, Territorial or authorized Tribal listing methodologies because it has adequate authority in its review of the list of impaired or threatened waterbodies to assure that the methodologies used by States, Territories and authorized Tribes appropriately identify waterbodies required to be listed under section 303(d).

Today's proposal, at § 130.31(b), adds a new requirement that States, Territories and authorized Tribes submit schedules for establishing TMDLs for all waterbodies listed on Part 1 of the list to EPA for review. EPA is proposing that States, Territories and authorized Tribes submit schedules for establishing TMDLs with every list of impaired and threatened waterbodies submitted to EPA. Although schedules will be submitted with lists, schedules are not part of the lists and EPA will not develop a schedule if a State develops an inadequate one or fails to submit one. While EPA does not propose to approve or disapprove the schedules, EPA will consider the schedules in evaluating the identification of waterbodies and priority ranking. Approving or disapproving schedules is not required because EPA reviews the priorities for establishing TMDLs in approving or disapproving the State, Territorial and authorized Tribal list and EPA retains ultimate authority to establish TMDLs if States, Territories and authorized Tribes fail to do so. If a State, Territory or authorized Tribe submits a schedule for Part 1 waterbodies that EPA concludes is inadequate (e.g., because it extends beyond fifteen years), EPA would provide comments to the State, Territory and authorized Tribe in its action on the list, and would expect the State, Territory or authorized Tribe to address EPA's comments. Finally, shifting the date of list submission from April 1 to October 1 will ease the difficulties that States, Territories and authorized Tribes may have in completing both section 305(b) reports and section 303(d) lists and submitting them to EPA on time; both are currently due to EPA on April 1 of every even-numbered year.

Options considered. Today's proposal requests comments on the existing regulatory requirement that State, Territorial and authorized Tribal lists be submitted every two years. The FACA endorsed the two-year listing cycle, but EPA has received many suggestions from States, Territories and authorized Tribes suggesting that lists be submitted at four or five year intervals. EPA is considering retaining the two-year listing interval, adopting a four-year or five-year listing cycle interval, or requiring that States, Territories and authorized Tribes submit their first list under the revised regulation no later than October 1, 2000, with subsequent list submittals occurring at longer intervals, e.g., every four years or every five years.

The existing two year listing cycle provides frequent intervals for States, Territories and authorized Tribes, EPA and stakeholders to identify impaired and threatened waterbodies and document progress in attaining water quality standards. The two-year listing requirement is also consistent with the section 305(b) reporting cycle. Such a short listing cycle, however, may over emphasize the listing of waterbodies as opposed to establishing and implementing TMDLs. A two-year listing cycle may also be inefficient because States, Territories and authorized Tribes generally do not find significant changes in water quality over such a short period of time.

A four-year listing cycle is also being considered. This interval would promote greater emphasis on establishing and implementing TMDLs, as opposed to listing impaired and threatened waterbodies. It would also allow for periodic coordination between section 303(d) lists and section 305(b) reports. A four-year listing cycle would not, however, provide for as frequent updates in progress towards attainment of water quality standards for States, Territories and authorized Tribes, EPA and stakeholders.

A five-year listing cycle is also being considered. A five-year cycle would allow States, Territories and authorized

Tribes to focus more time and resources on establishing and implementing TMDLs and is compatible with State, Territorial and authorized Tribal rotating basin and watershed approaches. It would also allow for a complete NPDES permitting cycle between each list.

Comments sought. EPA solicits specific comments on the cycle on which States, Territories and authorized Tribes should submit lists to EPA. EPA also solicits comments on whether EPA should approve or disapprove State, Territories and authorized Tribal schedules and whether schedules should be included as part of lists of impaired and threatened waters. EPA solicits comment on any or all aspects of the proposal, including the options considered.

g. Proposal To Change List Submission Deadline to October 1, 2000 in the Existing TMDL Regulations

Proposed rule. In addition to the comprehensive revision of the Part 130 regulations being proposed today, EPA also is proposing to amend the existing regulations to change the current April 1 deadline to October 1 for submission by the States, Territories, and authorized Tribes of their lists of impaired waters. If after consideration of public comments, EPA decides to promulgate this proposal, EPA intends that it would promulgate this amendment as a separate action as soon as possible after the close of the comment period.

The existing regulations at 40 CFR 130.7(d)(1) require States, Territories, and authorized Tribes to submit their lists on April 1 of every even-numbered year. EPA believes it makes sense to delay this requirement until October 1. EPA prefers that the next lists submitted should be based on the new requirements being proposed today. It is unlikely that EPA will promulgate these comprehensive revisions well in advance of the current April 1 deadline for submission of lists. To avoid the States, Territories, and authorized Tribes developing lists under the existing regulations to meet the April 1 deadline, EPA proposes to move that deadline to October 1. EPA expects to promulgate the comprehensive revisions well in advance of October 1. In that event, States, Territories, and authorized Tribes will develop their lists pursuant to the new regulations. In the event the new regulations are delayed, States, Territories, and authorized Tribes would be required to submit lists by October 1, 2000 pursuant to the existing regulations.

Comments sought. EPA requests comment on this separate proposal to amend the April 1 deadline in 40 CFR section 130.7(d)(1) to be October 1. EPA also requests comment on its proposal to promulgate this amendment as a separate action as soon as possible after the close of the public comment period. If you provide comments to EPA on this separate proposal, EPA requests that you highlight those comments for EPA's consideration immediately upon the close of the public comment period.

5. What Are the Proposed Rule's Requirements for TMDL Establishment and EPA Review of TMDLs Submitted by States, Territories and Authorized Tribes?

a. Minimum Elements of a TMDL Submitted to EPA

Existing requirements. Pollutant loads may be transported into a waterbody directly through effluent discharge, bank and bar erosion (in streams, rivers, estuaries, and lakes), re-circulation (e.g., nutrients in lakes, estuaries, and wetlands; contaminated sediments), solar heating, atmospheric deposition, and groundwater flows; or indirectly by overland flow caused by snowmelt or precipitation. A TMDL is established to attain or maintain the water quality standard for a specific pollutant that has been identified as the cause of an impairment or threat to a waterbody. Consistent with this goal, the existing TMDL regulations require States, Territories and authorized Tribes to establish TMDLs at levels necessary to meet water quality standards with seasonal variations and a margin of safety that takes into account any lack of knowledge concerning the relationship between pollutant loads and water quality. The existing regulations define loading capacity as the greatest amount of loading that a waterbody can receive without exceeding water quality standards and a TMDL as the sum of the individual waste load allocations for existing and future point sources and the load allocations for existing and future nonpoint sources and for natural background. The existing regulations also explain that TMDLs can be expressed, as either mass per time, toxicity, or other appropriate measures that relate to a State's, Territory's and authorized Tribe's water quality standard. The technical approach used to develop TMDLs varies according to the pollutant of concern, the type of waterbody, and the type and number of pollutant sources.

The ultimate goal of establishing TMDLs is to implement allocations that will result in the attainment and maintenance of water quality standards. Without implementation, a TMDL merely provides estimates of the pollutant load reductions necessary to attain water quality standards. Section 303(d) does not establish any new or additional implementation authorities beyond those that currently exist under the CWA or in State, Territory, local, Tribal or other Federal laws. TMDL regulations currently do not require States, Territories and authorized Tribes to develop implementation plans for TMDLs. Wasteload allocations are implemented through effluent limits in NPDES permits. Load allocations are implemented through a variety of State, local, Tribal, and Federal programs, as well as voluntary action by committed citizens.

Currently, EPA approval of TMDLs for waterbodies impaired from a combination of point and nonpoint sources requires that the wasteload allocation for the point source is determined on the basis of existing or planned reductions in loadings from nonpoint sources. EPA thus believes it is appropriate to require reasonable assurance that the load allocations will be implemented.

Proposed rule. The FACA Committee described a TMDL as an ''action oriented analysis of how to attain water quality standards'' that is crucial to the ultimate success of TMDLs. Today's proposal, at § 130.33 and § 130.34, establishes the minimum elements that States, Territories, and authorized Tribes must include in any TMDL submitted to EPA and the acceptable ways in which a TMDL can be expressed. It clarifies that a TMDL must be calculated to ensure that water quality standards will be attained and maintained throughout the waterbody in the event of reasonably foreseeable increases in pollutant loads. In today's proposal, TMDLs continue to provide for tradeoffs between alternative point and nonpoint source control options so that cost effectiveness, technical effectiveness, and the social and economic benefits of different allocations can be considered by decision-makers.

The technical approach used to establish individual TMDLs may vary according to the pollutant of concern, the type of waterbody and the type and number of pollutant sources. Today's proposal, at § 130.33, maintains the existing requirement that all TMDLs must consider the total pollutant load to a waterbody from point, nonpoint, and background sources. Today's proposal, at § 130.34, also clarifies that all TMDLs must contain an expression of the

pollutant load or load reduction necessary to assure that the waterbody will attain and maintain water quality standards, including aquatic or riparian habitat, biological, channel, geomorphological, or other appropriate conditions that represent attainment or maintenance of the water quality standard.

For example, a spawning use may be impaired because excessive sediment (i.e., clean sediment) is clogging the interstitial spaces of the stream bottom. These spaces normally provide habitat for the insects that are a food source for fish and dissolved oxygen needed by young fish to survive. While the ultimate water quality goal for this problem may be to increase successful spawning by 20 percent, the TMDL analysis and pollutant load allocation will be based on decreasing the pollutant load of clean sediment in the stream system and must be expressed in those terms. This example fits within the approach set out in § 130.34(3) for expressing TMDLs.

It is important that a TMDL be expressed in terms that are appropriate to the characteristics of the waterbody and pollutant combination. Today's proposal, at § 130.34, allows States, Territories and authorized Tribes to use one of four approaches when expressing a TMDL: sources. A ''daily'' load allocation would not provide the allocation of phosphorus necessary to attain or maintain water quality standards because, while it might cover current loads, it would not account for the amount of the pollutant stored in the lake or reservoir. In addition, allocations expressed in terms of daily loads might not account accurately for the different loadings and effect of the pollutant on water quality in the lake resulting from different seasons and climatic events. For a pollutant like phosphorus, the average annual load is the best indicator of actual conditions in the lake and best way to express the allocations established in any TMDL.

Similarly, waterbodies may be impaired by loadings of fine sediment delivered to the waterbody from hillslope or bank erosion. Allocations established as part of a TMDL for fine sediment would need to address the variability of sediment loadings due to flows related to rainfall or snowmelt, the natural background sediment loads carried by the waterbody, channel characteristics and aquatic life needs. A daily load of sediment would not necessarily be an accurate representation of the natural background load, the variability in loadings over time and season, or the amount of pollutant load reduction needed to maintain sediment loads within the natural limits and requirements of the waterbody to attain or maintain water quality standards. A seasonal or annual in-stream sediment allocation would be a more accurate and technically correct expression of the amount of sediment in the waterbody over time that would attain or maintain water quality standards.

Temperature is another example of a pollutant where other than daily loads may be the most appropriate expression of an allocation established as part of a TMDL. Temperature varies as a result of climate and season. Aquatic life require a range of temperatures to spawn, grow and maintain viable populations. A daily load of heat and the resultant temperature in the waterbody is not as important as maintaining the range required by the aquatic life through different seasons and climatological events. Therefore, an allocation of pollutants causing changes in temperature is often better expressed as seasonal or monthly averages keyed to preservation of the needed temperature ranges throughout the seasons.

EPA recognizes that some non-attainment of water quality standards is due in part, or entirely, to extremely difficult to solve problems. These include circumstances where attainment of water quality standards is technically or practically difficult or costly. The FACA recommended, and EPA concurs, that it is feasible to establish a TMDL for these difficult to solve problems. Both EPA and the FACA recognized, however, that some of the processes necessary to attain water quality standards are likely to take a long time to show progress in attaining water quality standards. EPA recognizes that implementation plans for these types of TMDLs may allow a relatively longer timeframe for water quality standards attainment.

The FACA Committee recommended that EPA clarify the minimum elements of an approvable TMDL for States, Territories and authorized Tribes and other stakeholders. The FACA Committee recommended that the ''TMDL development/implementation planning process'' be composed of seven components: (1) Target identification; (2) identification of needed pollutant reduction; (3) source identification; (4) allocation of pollutant loads; (5) implementation plan; (6) monitoring and evaluation; and (7) procedures for any needed revision based on evaluation. The FACA Committee did not reach consensus on whether the implementation plan is a required component of the TMDL under section 303(d) or whether the plan should be submitted separately from the TMDL under section 303(e).

Today's proposal endorses the FACA Committee's recommendation for regulatory clarification of the minimum elements of an approvable TMDL. The minimum elements are discussed below.

Waterbody Name and Geographic Location. Identification of the name and geographic location of the impaired or threatened waterbody. It is important to identify not only the name and location of the waterbody for which the TMDL is being established, but also the names and geographic locations of the waterbodies upstream of the waterbody that contribute significant amounts of the pollutant of concern. The geographic location of the waterbody must be identified using a nationally recognized georeferencing system. EPA will provide guidance and technical support necessary to ensure standardized georeferencing.

Identify the Pollutant Load. Identification of the pollutant load that may be present in a waterbody and still assure attainment and maintenance of water quality standards. After identifying the waterbody name and location, the next step in establishing a TMDL is to quantify the pollutant load for the pollutant or pollutants that have been identified as causing the waterbody impairment. For most or many pollutants, numeric water quality standards are available. When no numeric water quality standard is available, the pollutant load must still be quantified. The numeric pollutant load selected depends on consideration of the type of waterbody, its location, and how seasonal variations impact water quality.

Identify the Deviation from the Pollutant Load. Identification of the amount or degree by which the current pollutant load deviates from the pollutant load representing attainment or maintenance of water quality standards. Once the pollutant load has been identified, the degree to which conditions deviate from that load can be calculated, resulting in a determination of how much the existing pollutant load must be reduced to meet the required pollutant load. In some situations, the baseline load may not be quantifiable in which case the required load reduction may be based on the degree to which water quality deviates from the water quality standards and expressed in terms of a percentage reduction rather than an absolute mass-per-time reduction. Further, the allocations of the TMDL may be expressed in terms of a percentage reduction on a source-by-source basis rather than an absolute

mass-per-time load allocation to each source.

Source Categories, Source subcategories or Individual Sources. Identification of the source categories, source subcategories, or individual sources of the pollutant for which the wasteload allocations and load allocations are being established. The source assessment identifies (i.e., lists) and characterizes pollutant source(s) or category(ies) of sources that cause the waterbody impairment. The character of each pollutant source, its temporal loading and variability and location with respect to the waterbody are important. The factors to identify when conducting a source assessment include the source type (e.g., point, nonpoint, background, atmospheric); relative location and magnitude of each load; transport mechanisms (e.g., runoff vs. infiltration); and time scale of loading to the waterbody (i.e., duration and frequency of loading to receiving waterbodies).

Wasteload Allocation and Load Allocation. Waste load allocations for pollutants from point sources and load allocations for pollutants from nonpoint sources, including atmospheric deposition and natural background. Allocations are central to the TMDL process and TMDLs must clearly specify an allowable load for each source. TMDLs must include a wasteload allocation for each point source permitted under section 402 of the Clean Water Act discharging the pollutant for which the TMDL is being established. In two circumstances, however, pollutant waste loads may be allocated to a category or subcategory of sources or considered part of background loads. The first is when the discharge is subject to a general permit. As explained above, it is appropriate to allocate to the aggregate of sources covered by a general permit since the number and identity of sources discharging under a general permit generally will not be known. The second circumstance is when the State, Territory or authorized Tribe determines that certain pollutant loads relating to specific individual point sources do not need to be reduced in order for the waterbody to attain or maintain standards. In the case of nonpoint sources, allocation of pollutant loads to categories or subcategories of sources may be appropriate, especially if measures to reduce these loads are implemented for a whole category at once.

Margin of Safety (MOS). A margin of safety, expressed as unallocated assimilative capacity or conservative analytical assumptions used in calculating the TMDL. Each TMDL must include a MOS sufficient to account for technical uncertainties in establishing TMDLs and describe the manner in which the MOS is determined and incorporated into the TMDL. If a portion of the loading capacity is left unallocated to provide an MOS, the amount left unallocated must be identified and the basis for it described. If conservative modeling assumptions are relied on to provide an MOS, the specific assumptions providing the MOS must be identified. In either case, the basis for believing that the MOS is sufficient to attain and maintain water quality standards must be explained.

Seasonal Variations. TMDLs must account for seasonal variations and critical conditions concerning receiving water flow (e.g., low flow during drought periods), receiving water conditions (e.g. temperature), beneficial use impacts (e.g., key aquatic life stages), pollutant loadings (e.g., high flow nonpoint source runoff), and other environmental factors that affect the relationship between pollutant loading and water quality impacts. This ensures that the TMDL protects the receiving water when it is most sensitive to the pollutant.

Allowance for Future Loading. States, Territories and authorized Tribes must include an allowance for future loading in their TMDL that account for reasonably foreseeable increases in pollutant loads and carefully document their decision-making process. This allowance should be based on existing and readily available data at the time the TMDL is established. States, Territories, and authorized Tribes may choose to completely allocate the pollutant loading for a waterbody and thus leave no loading for future growth. EPA encourages State and local governments to adopt ''Smart Growth'' policies and requirements. Where adoption and/or implementation of ''Smart Growth'' policies and requirements will reduce future loadings, the allowance for future loadings may be reduced accordingly.

Implementation Plan. Today's proposal would revise the current regulations by requiring States, Territories, and authorized Tribes to submit a plan to implement the load allocations and waste load allocations of a TMDL, or group of TMDLs, as a component of a TMDL. Today's proposal reflects the FACA recommendation that TMDLs include implementation plans and proposes to substantially adopt the FACA's recommended minimum elements of an implementation plan. EPA is proposing that the implementation plan itself would be required to contain eight minimum elements: (a) implementation actions; (b) time line; (c) reasonable assurance; (d) legal or regulatory controls; (e) time required to attain water quality standards; (f) monitoring plan; (g) milestones for attaining water quality standards; and (h) TMDL revision procedures.

The proposal requires States, Territories and authorized Tribes to submit implementation plans that show how each TMDL is to be implemented. While States, Territories and authorized Tribes may submit an individual implementation plan with each TMDL, EPA believes that it is more effective for one implementation plan to describe how a number of TMDLs will be implemented. One implementation plan may, for example, show how all the TMDLs for a pollutant within an entire watershed will be implemented or how implementation of TMDLs for different pollutants within a particular basin will be implemented. EPA believes that this approach provides States, Territories and authorized Tribes with the flexibility to consider the complexity of water quality problems, effectively implement solutions and take advantage of existing implementation mechanisms such as management programs approved under section 319 or rotating basin approaches.

EPA has authority to require an implementation plan as an element of an approvable TMDL under section 303(d). Section 303(d) requires that TMDLs ''be established at a level necessary to implement the applicable water quality standards.'' (33 U.S.C. § 1313(d)(1)(C)). EPA is charged with approving or disapproving the TMDLs submitted by States, Territories or authorized Tribes, 33 U.S.C. § 1313(d)(2), but aside from explicitly requiring that a TMDL be established ''with seasonal variation'' and ''a margin of safety,'' Congress did not clearly establish the individual elements of a TMDL necessary to enable EPA to determine whether a specific TMDL is approvable as established at the necessary level. EPA has inherent power to establish regulations to fill this gap. *Morton* v. *Ruiz*, 415 U.S. 199, 231 (1974) (''The power of an administrative agency to administer a congressionally created . . . program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress.''). EPA has previously determined that there are elements, such as a separate determination of the proper allocations for point sources (WLAs) and nonpoint sources (LAs), which are necessary for EPA to determine whether statutory

goals are met by the TMDLs established by States, Territories and authorized Tribes.

Today EPA is proposing that one additional appropriate way to enable EPA to determine properly whether or not a TMDL is established at the level necessary to implement the applicable water quality standards is to require that an implementation plan be a component of a TMDL submittal. In determining whether EPA is properly construing the CWA, the first step is to determine ''whether Congress has directly spoken to the precise question at issue.'' *Chevron* v. *Natural Resources Defense Council*, 467 U.S. 837, 842 (1984). EPA has found that section 303(d) and its sparse legislative history are silent or ambiguous on the specific question of whether or not an implementation plan should be part of a TMDL. Therefore, the question is simply whether EPA's construction of the statute is permissible. *Id*. at 842–843. Given the statute's requirement that TMDLs, whether established by a State, Territory, or authorized Tribe, or by the Administrator, ''be established at a level necessary to implement the applicable water quality standards,'' section 303(d)(1)(C); section 303(d)(2), EPA's decision that one way to determine whether TMDLs are so established is to review the State, Territorial, or authorized Tribal plan to implement the TMDLs to see if it is a reasonable one. A plan which, among other things, demonstrates that the State, Territory, or authorized Tribe has selected specific implementation actions for sources, calculates the time which it should take for those actions to result in achievement of water quality standards, and establishes a monitoring plan to determine whether standards are in fact being achieved is, in EPA's judgment, an appropriate requirement to enable EPA to approve TMDL submittals. Moreover, Congress' concern that the establishment of TMDLs not be a paper exercise is manifest in its requirement that they be tied to the implementation of water quality standards and the requirement that approved TMDLs be incorporated into the State, Territorial, or authorized Tribal plan for its navigable waterbodies under section 303(e).

A consequence of today's proposal to require an implementation plan as one of the minimum elements of a TMDL is that the plan itself, like the other elements, is subject to EPA approval or disapproval. In evaluating an implementation plan, EPA would assess whether the State's, Territory's, or authorized Tribe's implementation plan contains each of the components required by the regulation and discussed in more detail below. If EPA disapproves a TMDL because it determines that the implementation plan is inadequate, pursuant to the statute, EPA would have 30 days to establish a TMDL, including an implementation plan.

EPA's proposal to require an implementation plan under section 303(d) does not directly result in a more enforceable TMDL. EPA's existing point source regulations require that permit effluent limits ''are consistent with the assumptions and requirements of any available wasteload allocation for the discharge.'' 40 CFR 122.44(d)(1)(vii)(B). Section 303(d) does not provide any additional CWA authorities to implement nonpoint source controls, therefore, the implementation plan will provide a program to deal with nonpoint source contributions to impaired waterbodies using existing Federal, State and local authorities and voluntary action to implement the allocations contained in TMDLs.

Each TMDL implementation plan must contain the following components:

Implementation actions. A description of the control actions and/or management measures required to implement the allocations contained in the TMDL, along with a description of the effectiveness of these actions and/or measures in achieving the required pollutant loads or reductions. These actions may vary depending on the pollutant for which the TMDL is being established, the complexity of the water quality problem and the controls required. For point sources, a list of NPDES permits and a schedule for revising the permits to be consistent with the TMDL is required.

For nonpoint sources, a description of best management practices or other management measures is required. EPA expects that section 319 management programs will be the basis for this description. EPA expects that the implementation plan would contain a description of what best management practices and/or controls will be used and identify the source categories, subcategories or individual source of the pollutant for which the TMDL is being established. The implementation plan may deal with sources on a watershed basis as long as the scale of the implementation plan is consistent with the geographic scale for which the TMDL allocations are being established.

EPA expects that the implementation plan would also describe what actions will be implemented by source category, subcategory or individual sources. The description of the actions should include an analysis of the anticipated or past effectiveness of the best management practices and/or controls that are expected to meet the wasteload and load allocations. The implementation plan should describe where the best management practices and/or controls will be implemented. This description should tie the implementation activity to the pollutant and geographic scale of the TMDL.

Timeline. The implementation schedule must contain a description of when the activities necessary to implement the TMDL will occur. It must include a schedule for revising NPDES permits to be consistent with the TMDL. The schedule must also include when best management practices and/or controls will be implemented for source categories, subcategories and individual sources. Interim milestones to judge progress are also required. The timeline should tie the implementation activity to the pollutant, the description of implementation actions and the geographic scale of the TMDL.

Reasonable assurance. The implementation plan must contain reasonable assurance that the implementation activities will occur. Reasonable assurance means a high degree of confidence that wasteload allocations and/or load allocations in TMDLs will be implemented by Federal, State or local authorities and/or voluntary action. For point sources, reasonable assurance means that NPDES permits (including coverage under applicable general NPDES permits) will be consistent with any applicable wasteload allocation contained in the TMDL. For nonpoint sources, reasonable assurance means that nonpoint source controls are specific to the pollutant of concern, implemented according to an expeditious schedule and supported by reliable delivery mechanisms and adequate funding. Examples of reasonable assurance include State, Territorial or authorized Tribal regulations or local ordinances, performance bonds, memoranda of understanding, contracts or similar agreements.

Voluntary and incentive-based actions may also be acceptable measures of reasonable assurance. Like all other forms of reasonable assurance for nonpoint sources, voluntary and incentive-based actions must be specific to the pollutant of concern, implemented according to an expeditious schedule, and be supported by adequate funding. Examples of voluntary and incentive-based programs include State, Territorial, or authorized Tribal programs to audit the implementation of agricultural or forestry best management practices,

memorandums of understanding between States, Territories, or authorized Tribes and organizations representing categories of sources or State-approved programs for categories or subcategories of sources to ensure effectiveness of best management practices. Voluntary participation by landowners in agricultural or forestry water quality protection or conservation programs, for example, installation or maintenance of riparian buffers or implementation of activities to participate in watershed-based effluent trades, is acceptable during establishment of the initial TMDL, subject to the conditions established in the regulation. However, if monitoring shows that voluntary measures are not resulting in the progress towards attainment and maintenance of water quality standards envisioned when the TMDL was approved, the State, Territory, or authorized Tribe may need to establish a regulatory approach.

EPA is aware that some States, Territories, or authorized Tribes are concerned that the proposed definition of ''reasonable assurance'' would require adequate funding for implementation measures addressing nonpoint sources at the time that the implementation plan is developed. While States, Territories, or authorized Tribes may have difficulty in completely identifying funding sources for all such measures, EPA intends that States could describe, based on best information available at the time, how adequate funding will be secured. In particular, currently available funding sources should be identified specifically. EPA requests comment on this particular provision of the reasonable assurance component of the implementation plan.

Section 303(d)(1)(C) of the CWA provides EPA with authority to require that reasonable assurance be included as one of the elements of a TMDL's implementation plan. Section 303(d)(1)(C) provides that TMDLs must be established at a level necessary to implement the applicable water quality standards. Section 130.33(b)(10)(iii) of today's proposal would require that each implementation plan contain a discussion of the State's, Territories' or authorized Tribe's reasonable assurance that wasteload allocations and load allocations will be implemented. Since TMDLs must be established at a level to implement standards, it is reasonable for EPA to require that the TMDL itself contain an explanation of how that implementation will occur. Providing such an explanation will allow the public to assess the adequacy of the TMDL when it is offered by the State, Territory or authorized Tribe for comment. It will also allow EPA an opportunity during its review of the TMDL to better determine whether the TMDL will, in fact, achieve its goal of bringing the waterbody into compliance with applicable water quality standards.

If EPA disapproves a TMDL submitted by a State, Territory or authorized Tribe, EPA may take a number of actions designed to provide reasonable assurance that implementation will occur to the same extent that a State would provide such assurance.

In the case of discharges from point sources, if EPA actions become necessary, a combination of existing and proposed NPDES permit authorities may be used to provide reasonable assurance. For example, in those States where EPA retains authority to issue NPDES permits, EPA currently has authority to issue NPDES permits to limit pollutant discharges as needed to implement TMDLs (i.e., accomplish wasteload reductions assigned to point sources in wasteload allocations). In those States where EPA has delegated authority to issue NPDES permits, current regulations give EPA clear authority to revise permit conditions in a State-issued permit as needed to implement TMDLs and otherwise comply with the Act.

Elsewhere in today's **Federal Register**, EPA is proposing changes to the NPDES permit program regulations at 40 CFR parts 122 and 123. These proposed changes would further clarify EPA's authorities which may be used to provide reasonable assurance for point sources.

For some impaired waters, attainment of water quality standards may require that pollutants from nonpoint sources be reduced. EPA has strong and diverse authorities to implement controls over nonpoint sources in the event that EPA were to disapprove a TMDL submitted by a State and to develop a TMDL for the impaired water.

For example, section 504 of the CWA provides the EPA Administrator with authority to address cases where a source or combination of sources is presenting an imminent and substantial endangerment to the health of persons, such as immediate health threats, or to the welfare of persons, such as the inability to market locally-harvested shellfish contaminated by water pollution. In these cases, the Administrator may bring suit under the authority of section 504 to restrain any person to stop the discharge of pollutants or to take any action as may be necessary. Where a waterbody is identified as impaired under section 303(d), strong evidence may exist that the impairment may present an imminent and substantial threat to the health or welfare of persons. This authority can support implementation of nonpoint pollution controls for impaired waters on a case-by-case basis.

In addition, EPA has authority to direct the way that States, Territories, and authorized Tribes use funding provided under section 319 of the CWA to implement nonpoint pollution controls. This authority is expressed in section 319(h)(1) of the CWA, which provides the EPA Administrator with clear authority to put terms and conditions on grants to States ''as the Administrator consider appropriate.'' Where EPA develops a TMDL and decides that additional resources will be necessary to provide reasonable assurance that the TMDL will be implemented, EPA may use this authority to direct that an appropriate amount of a State's, Territory's, or authorized Tribe's section 319 funding be devoted to implementing the EPA-developed TMDL. A number of authorized Tribes and all States and Territories receive grants under section 319; in 1999, the value of these grants is $200 million.

Taken together, these existing and proposed authorities for point and nonpoint sources will enable EPA to implement TMDLs in those cases where EPA establishes the TMDL in lieu of the State, Territory, or authorized Tribe.

Legal or regulatory controls. The implementation plan must contain a description of the legal authorities under which implementation will occur. These authorities include, for example, NPDES, section 401 certification, Federal Land Policy and Management programs, legal requirements associated with financial assistance agreements under the Farm Bills enacted by Congress and a broad variety of enforceable State, Territorial, and authorized Tribal laws to control nonpoint source pollution. The *Almanac of Enforceable State Laws to Control Nonpoint Source Pollution* (Environmental Law Institute, 1998) provides information on the laws in each State.

Time required to attain water quality standards. The implementation plan must contain an estimate of the time required to attain water quality standards. The estimates of time required to attain water quality standards must be specific to the source category, subcategory or individual source and tied to the pollutant for which the TMDL is being established. It must also be consistent with the geographic scale of the TMDL, including the implementation actions. As noted

above, EPA recognizes that for some extremely difficult to solve problems, implementation plans may allow relatively longer timeframes for attainment of water quality standards.

Monitoring plan. The implementation plan must contain a monitoring or modeling plan designed to determine the effectiveness of the implementation actions and to help determine whether allocations are met. The monitoring or modeling plan must be designed to describe whether allocations are sufficient to attain water quality standards and how it will be determined whether implementation actions, including interim milestones, are occurring as planned. The monitoring plan must also contain an approach for assessing the effectiveness of best management practices and control actions for nonpoint sources.

Milestones for attaining water quality standards. The monitoring plan must contain a description of milestones that will be used to measure progress in attaining water quality standards. The milestones must reflect the pollutant for which the TMDL is being established and be consistent with the geographic scale of the TMDL, including the implementation actions. The monitoring plan must contain incremental, measurable milestones consistent with the specific implementation action and the time frames for implementing those actions.

TMDL revision. The monitoring plan must contain a description of when TMDLs must be revised. EPA expects that the monitoring plan would describe when failure to meet specific milestones for implementing actions or interim milestones for attaining water quality standards will trigger a revision of the TMDL.

Endangered and Threatened Species Considerations. Today's proposal at § 130.33(d) provides that TMDLs shall not be likely to jeopardize the continued existence of an endangered or threatened species listed under section 4 of the Endangered Species Act or result in the destruction or adverse modification of its designated critical habitat. This provision reflects EPA's desire for expressly integrating the water quality objectives of the CWA and the species protection goals of the ESA. For example, EPA has recently developed a draft Memorandum of Agreement with the Fish and Wildlife Service and National Marine Fisheries Services describing how EPA will integrate species protection goals into our water quality standards and NPDES permitting programs. See 63 FR 2442 (January 15, 1999). EPA believes that consideration of the needs of endangered and threatened species is also consistent with the goals of the TMDL program as well. For example, § 130.28 of the proposed rule provides that waterbodies where federally listed species are present must be designated as ''high'' priority for the development of TMDLs, unless the State, Territory, or authorized Tribe shows information that the impairment does not affect the threatened or endangered species. Similarly, EPA believes that the prohibition against ''jeopardy'' contained in the proposed section recognizes that endangered and threatened species are an important component of the aquatic ecosystem. EPA believes it is very unlikely that any TMDL would have such a deleterious effect on any listed species, since TMDLs identify the reductions needed to meet water quality standards, and these reductions will obviously benefit listed species. Moreover, one important objective of the draft MOA recently published in the **Federal Register** is to ensure that water quality standards are protective of endangered and threatened species. However, the proposal makes clear that TMDLs must not be likely to jeopardize the continued existence of such species. This requirement is consistent with CWA authorities, which are fundamentally designed to achieve the goal of ''restoring and maintaining the biological integrity'' of the nation's waters. *See* CWA § 101(a).

Other options considered. In developing today's proposal, EPA considered several options. For example, EPA considered maintaining the current regulatory language, which does not require certain minimum elements for TMDLs. EPA rejected this option, agreeing with the FACA Committee that the regulation should more clearly state the required elements of TMDLs. This provides the States, Territories and authorized Tribes and EPA with increased certainty for TMDL development and approval.

EPA considered a number of options relating to implementation requirements. EPA considered maintaining the current regulatory language which does not specifically require an implementation plan to be submitted as an approvable element of a TMDL. EPA did not propose this option because it determined that it will be better able to evaluate a TMDL's consistency with the statutory requirements if an implementation plan is an element of a TMDL. In addition, EPA realizes that in order for TMDLs to result in water quality improvement they must be implemented. The requirement that an implementation plan be developed as part of a TMDL will ensure the establishment of successful TMDLs, that States, Territories and authorized Tribes will plan for implementing TMDLs, and will provide all stakeholders with information to help them assist in the establishment of TMDLs that help attain and maintain water quality standards.

EPA also considered requiring the submission of an implementation plan pursuant to section 303(d) concurrent with a TMDL, but not as an element of the TMDL. Requiring submission of an implementation plan separate from the TMDL is also a reasonable means for EPA to ensure that TMDLs are ''established at a level necessary to implement the applicable water quality standards'' (section 303(d)(1)(C)). Under this option, EPA would not approve or disapprove the implementation plan, but would consider the plan when reviewing the allocations established in the TMDL. A State's, Territory's or authorized Tribe's failure to submit an implementation plan could create uncertainty as to whether the TMDL was established at the statutorily required level, and that could result in EPA disapproval of the TMDL. Under this option, when EPA disapproves a State, Territory or authorized Tribal-submitted TMDL and establishes a TMDL in its place, EPA would not be required to develop an implementation plan because the plan would not be one of the required minimum elements of a TMDL. However, EPA could develop an implementation plan if it chose, and could also utilize any or all of its existing authorities to ensure that both the wasteload and load allocations established by the TMDL are implemented. EPA did not propose this option because it believes that States, Territories and authorized Tribes will develop more successful implementation plans if the failure to submit a plan or an adequate plan means that the TMDL will be disapproved and EPA will establish a TMDL, including an implementation plan, it its place.

EPA also considered requiring the submission of implementation plans as updates to water quality management plans developed pursuant to sections 208 and 303(e) of the CWA. Under section 303(e), the Administrator shall approve any continuing planning process ''which will result in plans for navigable waters within such State, which include, but are not limited to the following'' including TMDLs and implementation plans for new water quality standards. EPA reads this language to authorize EPA to require submission of implementation plans for TMDLs. Under this option, the

implementation plan would not be submitted as an element of the TMDL, but as an element of the water quality management plan under the existing regulatory requirement at 40 CFR 130.6, subject to State certification and EPA approval. Water quality management plans are used to direct implementation and TMDLs themselves are required to be incorporated into current plans. This option would revise 40 CFR 130.6 to require an implementation plan for each TMDL as an element of the water quality management plan. Like all other updates to water quality management plans, an implementation plan would be submitted to EPA for approval after the Governor certifies that the plan update is consistent with all other parts of the plan. Under this option, EPA could conditionally or partially approve the implementation plan, but would not disapprove the plan or establish a substitute plan. As part of this option, EPA considered whether to require submission of implementation plans with the TMDL or at some later date, *e.g.*, one year after the submittal of the TMDL. If EPA selected this option, it would also consider whether to require that implementation plans be submitted at the same time as the TMDL is submitted. Simultaneous submission would enable EPA to use the plan to assess the TMDL. EPA did not, however, propose this option because it concluded that requiring an implementation plan as an element of the TMDL under section 303(d) would most effectively link the assessment of water quality with necessary control actions and/or management measures. EPA also considered whether to revise the regulations consistent with the recommendations of the FACA Committee, to clarify that TMDLs may be expressed in a variety of ways, e.g., as other than daily loads, or using surrogate measures. In choosing to make these revisions, EPA relied upon the experiences of States, Territories and authorized Tribes and EPA in establishing TMDLs for pollutants often generated by nonpoint sources, such as clean sediments and nutrients. It is not always technically appropriate for such TMDLs to be expressed in terms of daily loads.

Comments sought. EPA solicits comments on the required minimum elements of TMDLs and whether any of the proposed required elements should be deleted or whether there are other elements that should be included. EPA also solicits comments on the proposal's requirement that States, Territories and authorized Tribes be required to submit implementation plans and whether implementation plans should be required as an element of a TMDL, as a required submission accompanying the TMDL, or as an update to a water quality management plan submitted at the same time as the TMDL. EPA may choose to adopt any of these options for the final rule.

b. Submission to EPA and EPA Actions

Existing requirements. Section 303(d) of the CWA requires that States, Territories and authorized Tribes submit TMDLs, ''from time to time,'' to EPA for review and approval. Under the statute, EPA has 30 days to approve or disapprove a TMDL. If EPA approves a TMDL, the submitting State, Territory or authorized Tribe must incorporate it into its water quality management plan required under section 303(e) of the CWA. If EPA disapproves a TMDL, it then has an additional 30 days to establish the TMDL. Existing regulations echo these statutory requirements.

Proposed rule. Today's proposal, at § 130.35, reflects the current regulatory submission and approval requirements for TMDLs. EPA is proposing several fairly minor changes to clarify how the TMDL approval process will work. Today's proposal provides that a complete TMDL submission is a TMDL that includes all of the minimum elements. EPA intends to begin its 30-day review only after EPA has received a submission with all minimum elements. The proposal also requires that when EPA establishes a TMDL, it must send it to the State, Territory, or authorized Tribe for incorporation into the water quality management plan. Finally, the proposed rule provides that when EPA establishes a TMDL, it will consider public comment on the TMDL for at least 30 days following the TMDL's establishment.

Other options considered. In developing today's proposal, EPA considered whether to revise the regulations to address how States, Territories and authorized Tribes and EPA must deal with TMDL establishment and approval decisions in the face of uncertainty. As explained below, EPA ultimately determined that this issue is best addressed in programmatic guidance and not in regulations.

The best science, coupled with rigorous and accurate data, is the best foundation upon which to establish TMDLs. TMDL development, however, can be inhibited by many factors, including inadequate data collection, incompatible data from different sources, improper analytical techniques, and inadequate or inappropriate models. As a result, many TMDLs will be developed where the data and predictive tools available do less than a perfect job of characterizing the problem and calculating allocations with a high level of certainty.

One option EPA considered was whether it would be appropriate to revise the regulations to require that TMDLs be established only on data and analyses which met very strict quality and analytical standards. EPA concluded that this approach is impractical and would significantly decrease the numbers of TMDLs that could be established. In addition, TMDL establishment is generally an iterative process; therefore, even if a TMDL is developed with less than the highest quality data and analyses, there will be opportunities in the future to re-examine the TMDL and progress made toward attaining water quality standards.

EPA also considered whether to revise the regulations to incorporate the FACA Committee's recommendation that States, Territories and authorized Tribes and EPA use a ''hierarchy approach'' to address TMDL establishment and approval in the face of uncertainty. This approach dictates that the highest level of quantitative rigor currently available always be used when establishing TMDLs. Where the desired level of quantitative rigor is not possible for certain TMDL elements, the FACA Committee recommended that the ''principle of inverse proportionality'' be applied. Relatively less quantitative rigor and certainty in certain TMDL elements is compensated for by a relatively greater degree of quantitative rigor and certainty in other TMDL elements.

EPA recognizes the benefits of applying the FACA Committee's hierarchy approach and principle of inverse proportionality to deal with the uncertainties associated with TMDL establishment and approval. However, EPA determined that the question of how to address uncertainty when establishing and reviewing TMDLs is best addressed in guidance and is therefore incorporating the hierarchy approach and the principle of inverse proportionality in the draft TMDL guidance available with today's proposal. The hierarchy approach, as explained in guidance, is one of the ways to establish TMDLs when information for certain TMDL elements is not of the highest possible quantitative rigor. In addition, other approaches to establishing TMDLs when the highest possible quantitative rigor is not available may be used by States, Territories and authorized Tribes and, therefore, EPA does not propose use of

the hierarchy approach as a regulatory requirement.

Comments sought. EPA solicits comment on any or all aspects of the proposal, including the options discussed.

c. EPA Establishment of TMDLs

Section 501(a) provides that ''[t]he Administrator [of EPA] is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter.'' Accordingly, EPA is proposing in § 130.36 expressly to codify its ability to establish TMDLs if the State so requests or if EPA determines that a State, Territory or authorized Tribe is not likely to establish TMDLs consistent with their schedules, or, if EPA determines it should establish TMDLs for interstate or boundary waterbodies.

It may be necessary for EPA to establish TMDLs in a number of situations. These include when interstate or international issues and coordination needs require EPA to assume a leadership role. Such interstate issues might involve TMDLs for large rivers, large watersheds or where complex technical questions require EPA to act as a catalyst in the establishment of a TMDL. For example, in complex water systems like the Chesapeake Bay where the impaired portions of the Bay are the responsibility of two states but also involve pollutant loadings from another state and the District of Columbia, where there is a cooperative agreement for protection of the Bay, plus three other states in the watershed, who are not part of an established agreement, EPA may provide an important role in bringing all jurisdictions into the planning process and ensuring that adequate authority and public process is covered for all states where wasteload allocations and load allocations are necessary. In situations like this EPA may work with both the Chesapeake Bay consortium that involves many diverse stakeholders and officials from the other states to ensure that all interested parties are represented in determining the loading allocations. Jurisdictional issues such as those faced on boundary waterbodies, may also cause EPA to initiate establishment of a TMDL.

EPA is also considering imposing a requirement that States, Territories and authorized Tribes consult with each other before listing as impaired a waterbody which forms part of the boundary between them and before they begin developing a TMDL for such waterbody. Such a consultation requirement would insure that, before interstate and boundary waterbodies are listed or given TMDLs, the neighboring governmental entities with jurisdiction over those waterbodies will have had an opportunity to share information about the waterbody's condition and the appropriateness of any planned action under section 303(d) for that waterbody.

EPA is also considering imposing a requirement that neighboring States, Territories and authorized Tribes with jurisdiction over a listed waterbody must jointly develop any TMDL for that waterbody. This cooperative exercise would be in lieu of EPA exercising its discretionary authority to develop the TMDL itself. Such a requirement would insure that neighboring States, Territories and authorized Tribes work with each other and all affected stakeholders in developing the TMDL.

EPA requests comment on these and any other ideas for listing or doing TMDLs for interstate waterbodies, including how best to develop TMDLs that account for equitable upstream/downstream State, Territory and authorized Tribe allocations and that account for loadings to downstream waterbodies like the Chesapeake Bay from far away upstream sources.

International waters pose especial difficulties. When establishing TMDLs for waterbodies that share an international border or flow from another country, the load reductions needed to meet water quality standards may not be achievable if those reductions are allocated only to U.S. sources. Should TMDLs for such waters allocate reductions to sources both within and outside the United States or in the alternative, should such TMDLs assume the status quo in terms of loads from outside the United States and allocate reductions only within the United States? EPA requests comments on either or any other approach.

EPA may also decide to exercise its authority if it determines that a State, Territory, or authorized Tribe has not or is not likely to meet its schedule for establishing TMDLs. EPA may decide, after first working with the State, Territory or authorized Tribe, that it should step in to establish TMDLs so that the overall pace of establishing TMDLs in the State, Territory or authorized Tribe remains expeditious. EPA anticipates that the decision to step in and establish TMDLs will be rare and based on case specific decisions. Finally, EPA may exercise its authority upon the request of the State, Territory or authorized Tribe.

EPA recognizes that its authority to establish TMDLs is not expressly stated in section 303(d). However, such authority is clearly implied in the CWA, is a reasonable interpretation of the Act, and is necessary to accomplish the purposes of the Act.

Section 303(d)(1)(C) places a clear mandate on the states to establish TMDLs for listed waterbodies. Section 303(d)(2) says that, if a state submits a TMDL and if EPA disapproves it, EPA shall establish a replacement TMDL within 30 days of the disapproval. Section 303(d) does not expressly say what must or may happen if states do not submit TMDLs to EPA for approval.

Courts, in finding that EPA has a mandatory duty to do TMDLs where a state has failed to do them, believed such a duty was necessary so that the Congressional scheme contemplated by Congress in section 303(d) is not frustrated by state failures to act. *See Scott* v. *City of Hammond,* 741 F.2d 992 (7th Cir. 1984)). As the *Scott* court said: '' We think it unlikely that an important aspect of the federal scheme of water pollution control could be frustrated by the states refusal to act.'' 741 F.2d at 997.

Consistent with this case law EPA clearly has authority to promulgate regulations specifying when it will establish TMDLs. In the face of Congress' obvious desire that states do TMDLs in the first instance and that EPA does them if it disapproves a submission, Congress would not have left EPA powerless to establish TMDLs in the face of state inaction. Such a result would frustrate the purposes of the statute. *See E.I. du Pont de Nemours & Co.* v. *Train,* 430 U.S. 112, 132 (1977) (the Supreme Court stating that it ''[could not] * * * conclude that Congress ha[d] given authority inadequate to achieve with reasonable effectiveness the purposes for which it has acted'' in the Clean Water Act)(quoting *Permian Basin Area Rate Cases,* 390 U.S. 747, 777 (1968)).

In *Dioxin/Organochlorine Center* v. *Clarke,* the Ninth Circuit affirmed a TMDL which EPA had established for dioxin in the Columbia River 57 F.3d 1517 (9th Cir. 1995). After consultation and involvement in the development of the draft TMDL, the States of Oregon, Washington and Idaho asked EPA to issue the proposed and final TMDLs as a federal action under the authority of section 303(d)(2). EPA proposed and established the dioxin TMDL, which the court upheld. Although the question of EPA's authority to do the TMDL absent a prior state submission and disapproval was not squarely before the court, the Ninth Circuit had no trouble concluding that EPA had sufficient authority pursuant to section 303(d) to establish the TMDL. 57 F.3d at 1527, 1528 n.14. For all these reasons, section 303(d)

gives EPA authority to establish TMDLs when States fail to do so.

6. What are the Proposed Rule's Requirements for Public Participation and Coordination with Federal Agencies?

Existing requirements. EPA's existing regulations do not include any States, Territories and authorized Tribes public participation requirements, except that 40 CFR 130.7 (c)(1)(ii) requires ''that calculations to establish TMDLs shall be subject to public review as defined in the State CPP.'' EPA's existing regulations, however, do include a requirement that when EPA disapproves and establishes either a list or a TMDL, EPA must seek public comment on the list or TMDL. Historically, EPA's policy has been that there should be full and meaningful public participation at the States, Territories and authorized Tribes level in both the listing and TMDL development processes. As such, EPA has encouraged States, Territories and authorized Tribes to carry out public participation consistent with their own public participation requirements.

Proposed rule. Communicating with the public and promoting public input into the listing and TMDL development processes is key to establishment of successful, robust TMDLs. For progress to be made in improving the water quality of our Nation's waterbodies, the public must be aware of water quality impairments and support actions to eliminate impairments. Today's proposal, at § 130.37, therefore requires that States, Territories and authorized Tribes provide the public with at least 30 days to review and comment on all aspects of the list (including the priority ranking and identification of the pollutant(s) and/or pollution causing or expected to cause each waterbody's impairment), the schedule of TMDLs, and TMDLs themselves prior to their submission to EPA. Today's proposal also requires that, at the time States, Territories, and authorized Tribes submit their list, schedule or TMDLs to EPA, they provide EPA with a written summary of any public comments received during the public comment period on the list, schedule and TMDLs, and their response to such comments.

Today's proposal, at § 130.23(a), also includes a requirement that States, Territories and authorized Tribes provide public notice and comment on their listing methodologies, and provide EPA with a summary of comments received and their response thereto when the final methodology is provided to EPA.

Today's proposal includes a requirement that at the time States provide the public the opportunity to review and comment on their lists of impaired or threatened waterbodies, priority rankings, schedules, and TMDLs, they must provide a copy of each of these documents to EPA. The proposed rule also would require that States consider any comments provided by EPA on these documents; EPA will consider how the States address its comments in its final decision approving or disapproving lists, rankings and TMDLs. By giving EPA an opportunity to review and provide the State with comments at an early stage in the process, this proposed provision will facilitate development of lists, rankings, schedules and TMDLs that reflect EPA's input. It is desirable, whenever possible, for EPA to provide its technical and other expertise at the time in the process where it can be reflected in final decisions made by States. The process will improve the likelihood that lists, rankings, and TMDLs ultimately submitted to EPA will be approved.

The proposed rule also included several provisions designed to facilitate consideration of endangered and threatened species when developing lists, rankings, schedules and TMDLs. These proposed provisions reflect EPA's desire for expressly integrating the water quality objectives of the CWA with the species conservation objectives of the Endangered Species Act (ESA). Consideration of the needs of endangered and threatened species is also consistent with the requirements and the objectives of the TMDL program. The proposed rule encourages States to establish processes with both the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that will provide for the early identification and resolution of threatened and endangered species as they relate to lists of impaired or threatened waterbodies, priority rankings, schedules, and TMDLs. In addition, under the proposed rule, at the time of public notice the States will send the U.S. Fish and Wildlife Services and the National Marine Fisheries Service, where appropriate (e.g., coastal areas) copies of lists and priority ranking, unless the States request EPA to do so; EPA will request the wildlife agencies to provide comments to the States and provide EPA copies of these comments. Under today's proposal States would be required to consider any comments received from the wildlife agencies prior to the submission of their lists of impaired or threatened waterbodies, priority rankings, schedules, and TMDLs. EPA will consider the comments of the wildlife agencies, and the manner in which they were addressed by the State, when taking action on lists, rankings and TMDLs submitted by States.

These proposed provisions will ensure timely input from the wildlife agencies early in the process rather than later. EPA would like to facilitate the development of working relationships between States and the Services so that the States will have the benefits of the Services' expertise, and the early involvement of the Services will help to integrate the species protection objectives of the ESA and the CWA into the TMDL program.

Other options considered. In developing today's proposal, EPA considered maintaining the status quo, i.e., not including in the regulations any specific public participation requirements. EPA rejected this option, however, because EPA believes that public participation in the listing and TMDL development processes is critical to the development of sound lists and TMDLs. In addition, providing the States, Territories and authorized Tribes with clear-cut public participation requirements eliminates any current confusion that may exist regarding EPA's expectations for States, Territories and authorized Tribes public participation on lists and TMDLs.

In developing today's proposal, EPA considered maintaining the current regulatory language that does not require copies of list, priority rankings, schedules, and TMDLs to be sent to EPA, Fish and Wildlife Service, and National Marine Fisheries at the time of public notice. EPA rejected this option because it does not provide an opportunity for meaningful input by EPA or other Federal agencies prior to the States', Territories' and authorized Tribes' submissions to EPA. EPA also considered a requirement that the States, Territories and authorized Tribes send advance copies only to EPA, not to Fish and Wildlife Service and National Marine Fisheries Service. EPA rejected this approach because the wildlife agencies would not receive these documents as early in the process if EPA, rather than the States, Territories and authorized Tribes, were to transmit these to the Service. However, if States, Territories and authorized Tribes wish, they can provide these documents only to EPA and EPA will forward them to the Services.

Comments sought. EPA solicits comment on any or all aspects of the public participation requirements in the proposal, including the options discussed.

7. What is the Effect of the Proposed Rule on Transitional TMDLs and Schedules?

Between the date of this proposal and the publication of a final rule in the **Federal Register** amending the current requirements for TMDLs, States, Territories and authorized Tribes (and in some instances EPA) will be establishing TMDLs pursuant to schedules submitted along with their 1998 section 303(d) lists or schedules incorporated into consent decrees or settlement agreements concluding TMDL lawsuits. Until these proposed amendments become final (and some aspects of this proposal may change as a result of public comments received over the next few months), the current regulations at § 130.7 establish the minimum requirements for approvable TMDLs. Given the likelihood that the current TMDL requirements will change significantly when the proposed amendments become final, there is a need to consider how these new regulations will apply and whether their effective date should be extended.

EPA is anxious that any new requirements be effective and implemented as soon as possible. Accordingly, EPA currently intends to have these revisions be effective 30 days after publication of the final rules in the **Federal Register**, as generally contemplated by the Administrative Procedure Act. However, recognizing the need for orderly administration of this program, EPA is proposing at § 130.38(a) that it will approve any TMDL submitted to it for review within 12 months of the final rule's effective date if it meets either the requirements in current § 130.7 or the new requirements proposed in §§ 130.32, 130.33 and 130.34. In recognition of the fact that EPA may establish TMDLs during this transition period, EPA is also proposing at § 130.38(b) that it may establish TMDLs within 12 months of the rule's effective date either according to the pre-amendment requirements in § 130.7 or the post amendment requirements in §§ 130.32, 130.33 and 130.34. EPA believes that this approach will afford States, Territories, authorized Tribes and EPA the certainty of knowing that, should they begin to establish TMDLs in the next year or so modeled on the requirements in the current rules, those TMDLs will not be determined to be inadequate as a result of the final adoption of these proposed amendments.

In addition to the issue of which criteria apply to TMDLs established during the period of transition between the new and old regulations, EPA is concerned about the impact of the proposed new TMDL requirements on commitments it has made to guarantee establishment of TMDLs under consent decrees and settlement agreements. During the past three years, EPA has entered into consent decrees and settlement agreements concluding 15 lawsuits alleging, among other things, that EPA should have established TMDLs in 13 different States. Those States are: Alabama, Arizona, California, Delaware, Florida, Georgia, Kansas, Mississippi, New Mexico, Pennsylvania, Virginia, Washington and West Virginia. Typically, these consent decrees or settlement agreements contains schedules according to which the States expect to establish TMDLs for all waterbodies identified on their section 303(d) lists and commitments by EPA to establish those TMDLs by certain dates if the State fails to meet its schedule. The schedules for establishing TMDLs in these consent decrees range from approximately four and one-half years to 12 years in length. The number of waterbodies and potential TMDLs covered under each consent decree also varies. Some consent decrees, like California (Newport Bay), address only a small number of impaired waterbodies. Others, like the Kansas consent decree, require the establishment of TMDLs for over 1000 waterbodies statewide.

Each of the settlements and accompanying TMDL schedules was negotiated by EPA in the context of what current regulations at 40 CFR 130.7 require an approvable TMDL to look like. Accordingly, when deciding on appropriate schedules to incorporate into these settlements, EPA considered how long it might reasonably take a State (or EPA) to establish the necessary TMDLs based on current requirements. The schedules that were negotiated with the plaintiffs and incorporated into the various settlements were aggressive even by these standards.

Today's proposal includes a number of changes to the current TMDL requirements which, while making for more effective TMDLs, may increase the time it takes to establish a TMDL. Most significantly, today's proposal at § 130.33(b)(10) would require that each TMDL include an implementation plan containing eight specific elements. While EPA always expected reasonable assurances that the TMDL's wasteload and load allocations would be implemented, the proposed regulations are more specific. Implementation plans must also include a description of the control actions and/or management measures which will be implemented and a monitoring/modeling plan designed to determine the effectiveness of these actions and measures. The proposal at § 130.37(a) also adds an express requirement that States, Territories and authorized Tribes provide the public with no less than 30 days to review and comment on any TMDLs before they are submitted to EPA. When submitted to EPA for review, TMDLs must also be accompanied by a summary of all the comments received and responses to those comments.

EPA recognizes that the new regulations may add time to the process, especially for near-term deadlines where States may not have enough time to adjust their processes. Accordingly, EPA requests comment on whether any new TMDL requirements contained in today's proposal may affect the ability of States to perform their obligations as contemplated under the various TMDL consent decrees and settlement agreements. To the extent these new provisions are promulgated and will require more time for establishment of TMDLs, EPA has at least two options it might consider. First, it might further phase in some of the requirements (for example, the requirement that all TMDLs have an implementation plan) so that States' near-term consent decree schedules can be met. Second, EPA might on a case-by case basis seek to modify court ordered TMDL schedules as appropriate to accommodate whatever additional workload is required by these new requirements. EPA invites comment on the extent to which any new TMDL requirements are likely to render any of the existing court-ordered TMDL schedules unrealistic, as well as the wisdom and necessity of pursuing either of the above-mentioned options. EPA also invites comment on whether it is appropriate to allow EPA to approve TMDLs submitted for review within 12 months of the final rule's effective date if those TMDLs meet either the pre-amendment requirements in § 130.7 or the post-amendment requirements being proposed today, and if not, what an appropriate timeframe would be. Similarly, EPA invites comment on whether it is appropriate to allow EPA to establish TMDLs within 12 months of the final rule's effective date either according to the pre-amendment requirements in § 130.7 or the post-amendment requirements being proposed today, and if not, what an appropriate timeframe would be. EPA is also considering whether it should establish a longer or shorter transitional period of time and specifically requests

comment on this issue and suggestions of alternative transition periods.

8. What Changes Does the Proposed Rule Make to the Continuing Planning Process and Water Quality Management Plan Requirements?

Existing requirements. EPA's existing TMDL regulations do not require States, Territories and authorized Tribes to develop implementation plans for TMDLs and do not include any requirements for States, Territories and authorized Tribes submission of implementation plans for TMDLs. EPA's regulations at 40 CFR 130.6, however, require States, Territories and authorized Tribes to update their water quality management plans, which are used to direct implementation of States', Territories' and authorized Tribes' water quality programs and which must include certain elements, including TMDLs and implementation measures.

Proposed rule. Today's proposal, at § 130.50 and § 130.51, makes several minor changes to the continuing planning process and water quality management plan requirements currently found at 40 CFR 130.5 and 130.6, respectively. It revises the existing continuing planning process regulations to clarify that States, Territories and authorized Tribes have discretion to go beyond the mandatory plan elements set out in the regulation and also include other processes, such as watershed-based planning and implementation. The proposal also makes clear that a CPP need not be a single document. This reflects the current practice that the CPP may be a compendium of many different State, Territorial and authorized Tribal planning documents. Today's proposal also revises the current regulatory requirements for water quality management plans at 40 CFR 130.6 to clarify that updates to water quality management plans should incorporate approved TMDLs and generally have a watershed basis. Under 40 CFR 130.6, States, Territories and authorized Tribes should update their water quality management plans as needed to reflect, among other things, changing water quality conditions and the results of implementation actions. If a State's, Territory's, or authorized Tribe's water quality management plan needs to be updated, EPA can, under 40 CFR 130.6, require the State, Territory or authorized Tribe to update their plan.

Other options considered. EPA considered not proposing any changes to the existing regulatory requirements for water quality management plans and CPPs.

Comments sought. EPA seeks comments on its proposed changes to the continuing planning process and water quality management regulatory requirements. EPA also seeks comments on whether other changes are needed to these requirements.

9. How Can the Public Petition EPA to Establish TMDLs?

This regulation is proposed under authority granted to EPA under CWA sections 501(a) and 303(d), 33 U.S.C. §§ 1361(a), 1313(d).

The purpose of § 130.65 is to formalize a petition process for the public to request that EPA step in and perform duties imposed on States, Territories and authorized Tribes by section 303(d). Although this petition process has been available to the public since section 303(d) was enacted, it has seldom been utilized in the context of section 303(d). This new section should increase public awareness of this procedure for requesting Agency action. See, APA § 555(b), 5 U.S.C. § 555(b).

EPA is proposing to codify a specific petition process for section 303(d) for several reasons. First, EPA recognizes that numerous citizen groups and individuals are very interested in promoting the expeditious development of meaningful TMDLs throughout the Nation. EPA is also aware that many of these groups and individuals have been dissatisfied both with the pace at which States have been establishing TMDLs and, to some extent, with the nature and degree of EPA oversight of State progress in establishing TMDLs. Although these citizens at all times have possessed the right to petition EPA to intervene more actively in a State's TMDL development process, EPA interprets the lawsuits that citizens have filed against EPA within the last five years to be an indication either that the public is unaware that it can take its grievances directly to EPA for consideration, or that it has concluded that taking such grievances directly to EPA would be futile. By proposing this petition process, EPA hopes to make it very clear to the public that EPA recognizes the important role that the public serves in helping the States and EPA to implement section 303(d). Second, presenting grievances in the first instance to EPA rather than to the courts will allow EPA, by applying its expertise to the facts the citizens present, to respond more directly to citizens' concerns in the context of its national policy objectives. EPA's discretionary authority to oversee the State, Territorial and authorized Tribal implementation of section 303(d) is not unfettered; the petition process thus would provide a mechanism whereby citizens can assure that EPA exercises that discretion wisely. Third, the petition process—and the resulting administrative record—will promote more efficient judicial review of EPA's decision whether and, possibly, how to intervene in any particular State.

When Congress directed EPA to approve or disapprove State, Territories or authorized Tribes section 303(d) lists and TMDL submissions and to establish its own lists or TMDLs in the event EPA disapproves the submission, Congress imposed very specific duties on EPA under section 303(d). However, EPA does not believe that its role under section 303(d) is limited to those narrow, although important, duties. Section 303(d) reasonably can also be interpreted to vest in EPA more general oversight authority to ensure the States' timely and meaningful implementation of section 303(d).

EPA, on its own initiative, can and does exercise that oversight authority. For example, over the past decade, EPA has modified its regulations and issued numerous guidance documents to emphasize the importance of the section 303(d) listing process. As a consequence, States'', Territories' and authorized Tribes' section 303(d) lists have become more comprehensive and, accordingly, more useful in water quality decision making. EPA has also provided considerable technical and financial assistance to invigorate TMDL development, e.g., by providing technical support in establishing TMDLs, completing and supporting analyses necessary to establish TMDLs and developing computer models for use in establishing TMDLs. EPA has also worked with States, Territories and authorized Tribes to develop long-term schedules providing for the establishment of TMDLs on all listed waters.

EPA recognizes, however, that members of the public would like to influence how EPA exercises its discretionary authority to oversee the TMDLs, specifically with respect to particular States, Territories and authorized Tribes. The proposed petition process is the best way to accomplish this. (Indeed, although the petition regulation is merely proposed, not codified, EPA notes that citizens are free to exercise their petition rights at any time.) First, the petition process allows EPA to apply the statutory scheme to particular factual situations raised by the petitioners. It allows EPA to consider the facts presented by the petitioners, to make its own findings of facts, to apply its expertise, and, finally, to exercise the discretion granted it by

Congress to determine if, when, and how to intervene to reinforce a State's, Territory's or authorized Tribe's implementation of section 303(d). In response to a petition, EPA will also need to explain the bases for its decisions, which in turn can stimulate further policy debate. Second, the petition process allows EPA to consider the petitioner's request in light of its overall national policy goals, statutory obligations, and resource constraints. Because EPA is charged with implementing numerous other environmental statutes in addition to the CWA, the petition process allows EPA to balance all of its responsibilities and objectives in a way that ensures that it is carrying out its overall mission in the most timely and effective manner possible. Third, the petition process does not prevent citizens from seeking redress in federal court. To the contrary, the petition process will facilitate judicial review of EPA's oversight of the State, Territorial or authorized Tribal TMDLs. In response to citizens' petitions, EPA will assemble and analyze relevant facts, reach a decision, and explain the basis for that decision. If a citizen is dissatisfied with the resulting decision and files suit, a reviewing court would have an administrative record against which to evaluate the reasonableness of EPA's decision. In EPA's view, the petition process allows the administrative process to proceed, with the results of the process subject to judicial review only at the conclusion of the process. This not only honors the separate roles and responsibilities of the administrative and judicial processes, but it also assures that EPA, in the first instance, has an adequate opportunity to exercise the discretionary authority Congress conferred upon it.

Section 130.65(b) clarifies that this petition procedure is not intended to be used to prompt EPA to establish a TMDL for a particular waterbody, or for moving a particular waterbody to a different part of a the schedule. Efforts to alter State, Territorial or authorized Tribal priorities are more suitably directed to that State, Territory or authorized Tribe. The best time to convey comments on State, Territory or authorized Tribal priorities is likely to be when the section 303(d) list of waters needing TMDLs and the schedule for establishing TMDLs is published for public comment. EPA hopes to reserve what limited resources it has for intervening with support in those instances where the shortcomings, or perceived shortcomings, of State, Territorial or authorized Tribal efforts are substantial.

It is EPA's goal to answer petitions filed under 40 CFR 130.65(c) within four months of receipt. See 40 CFR 130.65(e). In accordance with APA section 555(b), ''within a reasonable time, each agency shall proceed to conclude a matter presented to it.'' Although EPA cannot guarantee that each petition will be answered within four months, it commits to making reasonable efforts to meet that deadline.

Section 130.65(d) is not intended to delineate an exhaustive list of elements a petition must contain. Nor is 40 CFR 130.65(f) intended to contain a comprehensive list of factors EPA will consider in evaluating whether to step in and take primary responsibility for conducting activities that States, Territories or authorized Tribes are directed to perform under section 303(d). EPA will consider any and all relevant information submitted with a petition under 40 CFR 130.65.

10. What Changes Does the Proposed Rule Make to the Water Quality Standards and State Submission Requirements?

Existing requirements. EPA's regulations at § 130.3 provide a definition of ''water quality standard'' that replicates the definition found in the water quality standards regulations at 40 CFR Part 131. EPA's regulations at § 130.10(d) describe requirements that EPA promulgated in 1989 to implement CWA section 304(l). Section 304(l) required States, Territories, and authorized Tribes to submit certain water quality information about waters by February 4, 1989.

Proposed rule. EPA is proposing to delete both § 130.3 and § 130.10(d). Section 130.3 merely duplicates the same definition of ''water quality standard'' found in the water quality standards regulations at 40 CFR Part 131. As a result, the existing language at § 130.3 is duplicative and unnecessary. Section § 130.10(d) required a one-time information submittal by States, Territories, and authorized Tribes. This requirement has not been used since all the States and Territories submitted this information, and CWA section 304(l) requires only one submittal. Therefore, that the requirement to submit this information is now obsolete.

Comments sought. EPA seeks comments on its proposed deletions to the existing water quality standards definition and the CWA section 304(l) parts of the state submittal requirements.

Regulatory Requirements

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act, generally requires Federal agencies to conduct an initial regulatory flexibility analysis (IRFA) describing the impact of the regulatory action on small entities for any rule for which a notice of proposed rulemaking is required under the Administrative Procedure Act (5 U.S.C. section 551 *et seq.*) or any other statute. However, under section 605(b) of the RFA, if the Administrator for EPA certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare an IRFA. The Administrator is today certifying, pursuant to section 605(b) of the RFA, that this proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, EPA did not prepare an initial regulatory flexibility analysis.

The RFA requires analysis of the impacts of a rule on the small entities *subject to the rule's requirements.* See *United States Distribution Companies* v. *FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996); *Mid-Tex Electric Co-op., Inc.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985); *Motor & Equipment Manufacturers Ass'n* v. *Nichols*, 142 F.3d 449 (D.C. Cir. 1998). Today's rule establishes no requirements applicable to small entities, and so is not susceptible to regulatory flexibility analysis as prescribed by the RFA. (''[N]o [regulatory flexibility] analysis is necessary when an agency determines that the rule will not have a significant economic impact on a substantial number of small entities *that are subject to the requirements of the rule.*'' *United Distribution* at 1170, quoting *Mid-Tex Elec. Co-op* v. *FERC,* 773 F.2d 327, 342 (D.C. Cir. 1985) (emphasis added by *United Distribution* court). EPA is therefore certifying that today's rule will not have a significant economic impact on a substantial number of small entities, within the meaning of the RFA, for the following reasons.

First, section 303(d) of the CWA directs States, Territories and authorized Tribes (and EPA, if it disapproves the State's, Territory's or authorized Tribe's efforts) to establish lists of impaired waterbodies and TMDLs for those waterbodies. Tribes may apply for authority to establish lists and TMDLs in Indian Country. The proposed regulations establish requirements for EPA, States, Territories and authorized Tribes to follow when establishing TMDLs and lists of

impaired waterbodies under section 303(d) of the CWA. The regulations apply only to those three categories of entities and do not impose TMDL or listing requirements upon any small entities.

Second, the impact (if any) on small entities of any TMDLs or lists that might be established or approved by EPA, States, Territories and authorized Tribes pursuant to these proposed regulations is indirect and highly speculative. First, no impact flows directly from these proposed regulations. Only the listing or TMDL action itself taken by EPA, States, Territories and authorized Tribes pursuant to these regulations would have any possible impact. Second, any economic impact on small entities will result, if at all, only as a consequence of future State, territorial, tribal or EPA actions. The CWA and these proposed regulations afford the States, Territories, authorized Tribes and EPA considerable discretion in deciding which waterbodies to list, how to prioritize such waterbodies, how to schedule the waterbodies for TMDL development, and how to calculate and apportion TMDLs and their component load and wasteload allocations. The extent to which future listing or TMDL approval decisions may have any impact on small entities is impossible to predict given the uncertainties inherent in a process involving the exercise of discretion over so many variables. While a State's, Territory's or authorized Tribe's implementation of today's rule *may* ultimately result in the listing of a water or development of a TMDL that *may* have an impact on point or nonpoint source dischargers, EPA's action today does not apply to any discharger, including small entities.

Third, the uncertainty regarding what (if any) impact these proposed regulations may have on small entities is increased by the fact that TMDLs are not self-implementing. Assuming a TMDL is established by a State, Territory, authorized Tribe, or EPA for a listed water, the TMDL's wasteload allocations (for point sources) and the load allocations (for nonpoint sources) are not directly enforceable under the CWA. Under EPA's NPDES permitting rules, effluent limits in point source permits must be ''consistent with'' (but not necessarily identical to) wasteload allocations in approved TMDLs. However, the TMDLs themselves (and their wasteload allocations) are not independently enforceable. With respect to nonpoint sources, the load allocations in a TMDL are only ''enforceable'' to the extent they are made so by State, Territorial, or authorized Tribal laws and regulations. There are no Federal requirements that such load allocations actually be met by small (or any other) entities. Given the compounding uncertainties regarding (1) Whether any particular waterbody will be listed, (2) if it is, when a TMDL will be established, (3) what the TMDL's allocations will be, (4) which entities will be assigned those allocations, and (5) whether, and in what form, those allocations will be implemented, it is impossible to say whether or to what extent these proposed regulations (and any resulting TMDL or listing actions) will impact small entities.

Finally, even assuming that future listing or TMDL actions may ultimately have some discernable effect on small entities, such impacts would actually flow from requirements already established by section 303(d) of the CWA and the States, Territories' and authorized Tribes' water quality standards and not these proposed regulatory amendments. Section 303(d) requires that States, Territories and authorized Tribes (or, under certain circumstances, EPA) list waterbodies and establish TMDLs with reference to criteria contained in State, Territorial or authorized Tribal water quality standards. Independent of today's proposed amendments, States, Territories and authorized Tribes (and, under certain circumstances, EPA) already have an obligation to list waterbodies and establish TMDLs necessary to implement the State, Territorial, and authorized Tribal water quality standards. Today's proposals merely amend EPA's existing regulations implementing those statutory requirements. Any impacts should be seen as resulting from the independent statutory obligation to establish TMDLs that implement the State, Territorial and authorized Tribal water quality standards, and not from these proposed regulatory requirements.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action.'' As such, this action was submitted to OMB for review. Changes made in response to OMB suggestion or recommendations will be documented in the public record.

Under the regulatory review provisions of Executive Order 12866 EPA evaluates the benefits and costs of proposed new rules. In the case of an existing program, like the TMDL program, this assessment focuses on the benefits and costs associated with the change in regulatory requirements. Accordingly, EPA has prepared an analysis of the direct costs that the new requirements of this proposed rule will impose on States, Territories and authorized Tribes that must list, and develop TMDLs for, impaired waters. This analysis, entitled ''Analysis of the Incremental Costs of Proposed Revisions to the TMDL Program Regulations'' is available in the docket for the rulemaking.

However, EPA recognizes that the TMDL program is of interest to a wide range of stakeholders, and expects that stakeholders will have an interest in understanding the costs and benefits resulting from implementation of the TMDL program as well as the direct costs of developing TMDLs to States, Territories, and authorized Tribes under this proposed rule. In anticipation of the interest of diverse stakeholders, EPA has begun work to gather information about the costs and benefits that can be expected to result from implementation of the TMDL program. A key part of this assessment is to better understand the costs and benefits of the existing TMDL program, as well as the incremental costs and benefits that will result from the changes to the TMDL program.

As part of this effort, EPA is gathering information concerning the costs that pollution sources may incur in implementing the pollution controls called for in TMDLs developed under the new rule. These costs, however, are difficult to estimate. A TMDL is developed on a specific water body and is the product of a locally-based decision-making process. The allocation decisions made at the local level may

produce water quality benefits at a lower cost than projected by EPA cost models. Also, many of the actions identified in TMDLs as needed to meet water quality goals may to be required under other provisions of the Clean Water Act or other Federal or State laws. It may be difficult in some cases to distinguish actions undertaken to comply with other statutory provisions from those undertaken to implement TMDLs. In such cases, it is appropriate to consider alternative assumptions about the costs and benefits that would occur anyway and those that would result from implementing TMDLs.

EPA is also gathering information on the water quality, environmental, public health and economic benefits of the TMDL program and the restoration of the health of the Nation's polluted waters. While the estimation of benefits is traditionally difficult, EPA is working to develop improved models for describing benefits in both qualitative and quantitative terms. As noted above, because the TMDL program is related to other provisions of the Clean Water Act, and other Federal and State laws, attributing benefits to the TMDL program requires a certain amount of judgment and may require consideration of alternative assumptions or ''baselines''.

EPA is working to develop this information and analysis expeditiously. As this work evolves and its quality is sufficient to meaningfully inform the public, EPA will make it available for public review and comment. EPA hopes to be able to provide results from this work prior to the final promulgation of the TMDL rule.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Territory, authorized Tribal or local governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal Mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government EPA plan. The plan must provide for notifying potentially affected small governments, enabling officials of the affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today's proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The costs for States, Territories and authorized Tribes to implement the requirements in today's proposal are not expected to exceed $25 million in any one year. In addition, since today's proposal does not impose any requirements on the private sector, the private sector will incur no costs. Thus, today's proposal is not subject to the requirements of section 202 and 205 of UMRA.

As explained in the Regulatory Flexibility Act section of the preamble, this proposed rule establishes no requirements applicable to small entities and, thus, this proposed rule will not significantly affect small entities. EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments including Tribal governments. As explained earlier in this preamble, the Clean Water Act authorizes EPA to treat an Indian Tribe in the same manner as a State for purposes of establishing lists of waters and TMDLs, and EPA today is clarifying the test an Indian Tribe must meet to be authorized to establish lists of impaired waters and TMDLs in Indian country. Currently, there are no Tribes authorized to establish TMDLs under section 303(d) and, as a result, today's proposal will not significantly or uniquely affect Tribal governments. However, as Tribes continue to build their Clean Water Act capacity and obtain water quality standards program approval, some Tribes are likely to seek approval to establish TMDLs. Moreover, whether or not Tribes choose to do so, they have a strong interest in protecting water quality on Tribal lands. Thus, even though today's proposal will not significantly or uniquely affect Tribal governments, Tribes may in the future be subject to the requirements in today's proposal. Recognizing the need to consider the views and concerns of Tribal governments in any comprehensive evaluation of how TMDLs are established, EPA determined it was appropriate to include a Tribal representative on the TMDL FACA Committee. The committee's final report addresses Tribal issues, recommending that EPA increase efforts to educate Tribes about water quality programs, including TMDLs, and ensure that EPA and State water quality staff respect the government-to-government relationship with Tribes in all TMDL activities.

D. Paperwork Reduction Act

Today's action adds new information requirements in 40 CFR part 130. The information collection request for these new provisions are currently under development. EPA expects to publish a proposed Information Collection Request (ICR) for these requirements in the **Federal Register** for comment at the time the ICR is submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* after public comment. EPA expects to publish this notice within 30 days of the publication of this proposal. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

E. Executive Orders on Federalism

Under Executive Order 12875, ''Enhancing the Intergovernmental Partnership,'' EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, any written communications from the governments,

and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

EPA has concluded that this proposed rule will create a mandate on State governments and authorized Tribes and that the Federal government will not provide all of the funding necessary to pay the direct costs incurred by the State governments and authorized Tribes in complying with the mandate. However, EPA has substantially increased funding for States, Territories, and authorized Tribes through the State-matched CWA section 106 and 319 grant programs. In developing this proposed rule, EPA consulted with State, local, and tribal governments to enable them to provide meaningful and timely input in the development of this rule.

Before beginning to develop today's proposal, EPA convened a Federal Advisory Committee to make recommendations for improving the efficiency and effectiveness of TMDLs. The TMDL FACA Committee was comprised of 20 members, including four senior level state officials, an elected local official, and a Tribal consortium representative. Over a period of one and one-half years, the TMDL FACA Committee held six meetings at locations throughout the country. These meetings were open to the general public, as well as representatives of State, local, and Tribal governments, and all included public comment sessions. The TMDL FACA Committee focused its deliberations on four broad issue areas: identification and listing of waterbodies; development and approval of TMDLs; EPA management and oversight; and science and tools. On July 28, 1998, the TMDL FACA Committee submitted its final report to EPA containing more than 100 consensus recommendations for changes and improvements to TMDLs. As explained throughout this preamble, EPA carefully reviewed the TMDL FACA Committee's consensus recommendations and incorporated, in whole or in part, most of those recommendations in this proposal.

Following completion of the FACA Committee process, EPA continued to meet with State and local government officials to seek their views on needed changes to the Water Quality Planning and Management (TMDL) regulations. While expressing support for many of the proposed changes being considered by EPA, State officials and their representatives also expressed some general concerns about the capacity of State governments to carry out the new requirements proposed today. In particular, States were concerned about the capacity of the state governments to carry out any new requirements beyond those in the current regulations. Local government officials expressed concerns in particular about any TMDL allocation approaches that could in their view, result in municipal point sources having to bear an inequitable share of the pollutant load reductions need to attain water quality standards. In developing today's proposal, EPA considered the concerns of State, local and tribal governments and determined the need to revise the TMDL regulations to provide States, Territories and Tribes with clear, consistent, and balanced direction for listing waters and developing TMDLs and thereby improve the effectiveness, efficiency and pace of TMDL establishment and water quality improvement.

Finally, while there is a new executive order on federalism (Executive Order 13132), it will not go into effect for ninety days. In the interim, under the current Executive Order 12612 on federalism, this rule does not have a substantial direct effect upon States, upon the relationship between the national government and the States, or upon the distribution of power and responsibilities among the various levels of government. The proposed regulations will not have a substantial direct effect on the relationship between the national government and the States or upon the distribution of power and responsibilities among the various levels of government because the proposed regulations reflect the statutory scheme that places primary responsibility with the States while EPA retains oversight authority. States continue to have primary responsibility for identifying impaired waters, setting priorities, and developing TMDLs. EPA's role continues to be one of reviewing state actions and exercising its authority to identify waters and develop TMDLs only in the face of inadequate state action.

The proposed regulations also should not have a substantial direct effect upon States because the provisions in the proposed regulations include many requirements and recommendations currently contained in EPA's existing regulations and guidance. While the proposed regulations provide additional detail that EPA believes is necessary to ensure consistency and effective implementation of the program, the statutory and current regulatory framework is not altered. Even the new provision for States to include implementation plans as a component of TMDLs reflects EPA's existing guidance and expectation that States would develop implementation plans as part of the TMDL process although not as a required component of the TMDL. Accordingly, these provisions should not have a substantial direct effect on States or on intergovernmental relationships or responsibilities.

F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

As explained above in the discussion of UMRA requirements, today's rule proposal does not significantly or uniquely affect the communities of Indian tribal governments nor does it impose substantial direct compliance costs on them since currently there are no Tribes authorized to establish TMDLs. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to today's proposal.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that

EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is not ''economically significant'' and it does not establish an environmental standard intended to mitigate health or safety risks. Today's proposal is a procedural rule.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub L. 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

List of Subjects in 40 CFR Part 130

Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: August 12, 1999.

Carol Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended by revising part 130 as follows:

PART 130—WATER QUALITY PLANNING AND MANAGEMENT

Subpart A—Summary, Purpose and Definitions

Sec.
130.0 Program summary and purpose.
130.1 Applicability.
130.2 Definitions.

Subpart B—Water Quality Monitoring and Reporting

130.10 Water quality monitoring.
130.11 Water quality report.

Subpart C—Identifying Impaired and Threatened Waterbodies and Establishing Total Maximum Daily Loads (TMDLs)

What This Subpart Covers

130.20 Who must comply with subpart C of this rule?
130.21 What is the purpose of this subpart?

Identifying and Listing Impaired or Threatened Waterbodies, Documenting Your Approach for Making Listing Decisions, and Establishing a Schedule for TMDL Development

130.22 What data and information must you assemble to identify and list impaired or threatened waterbodies?
130.23 How do you document your approach for considering and evaluating all existing and readily available data and information to develop your list and priority rankings?
130.24 When must your methodology be submitted to EPA?
130.25 What is the scope of your list of impaired or threatened waterbodies?
130.26 How do you apply your water quality standards antidegradation policy to the listing of impaired and threatened waterbodies?
130.27 How must you format your list of impaired or threatened waterbodies?
130.28 How do you prioritize the waterbodies on Part 1 of your list?
130.29 When can you remove a waterbody from your list?
130.30 When must you submit your list of impaired or threatened waterbodies and priority rankings to EPA and what will EPA do with it?
130.31 What must your schedule for submitting TMDLs to EPA contain and when must you submit it to EPA?

Establishment and Review of TMDLs

130.32 Must you establish TMDLs?
130.33 What are the minimum elements of a TMDL submitted to EPA?
130.34 How are TMDLs expressed?
130.35 What actions must EPA take on TMDLs that are submitted for review?
130.36 Can EPA establish a TMDL if you fail to do so?

Public Participation

130.37 What public participation requirements apply to the list, priority rankings, schedule, and TMDLs?

Transitional TMDLs

130.38 What is the effect of the proposed rule on transitional TMDLs?

Subpart D—Water Quality Planning and Implementation

130.50 Continuing planning process.
130.51 Water quality management plans.

Subpart E—Miscellaneous Provisions

130.60 Designation and de-designation.
130.61 State submittal to EPA.
130.62 Program management.
130.63 Coordination with other programs.
130.64 Processing application for Indian Tribes.
130.65 Petitions to EPA to undertake actions under section 303(d).

Authority: 33 U.S.C. 1251 *et seq.*

Subpart A—Summary, Purpose and Definitions

§ 130.0 Program summary and purpose.

(a) This subpart establishes policies and program requirements for water quality planning, management and implementation under sections 106, 205(j), non-construction management 205(g), 208, 303 and 305 of the Clean Water Act. The Water Quality Management (WQM) process described in the Act and in this regulation provides the authority for a consistent national approach for maintaining, improving and protecting water quality while allowing States to implement the most effective individual programs. The process is implemented jointly by EPA, the States, interstate agencies, and areawide, local and regional planning organizations. This regulation explains the requirements of the Act, describes the relationships between the several components of the WQM process and outlines the roles of the major participants in the process. The components of the WQM process are discussed below.

(b) Water quality standards (WQS) are the State's goals for individual waterbodies and provide the legal basis for control decisions under the Act. Water quality monitoring activities provide the chemical, physical and biological data needed to determine the present quality of a State's waters and to identify the sources of pollutants in those waters. The primary assessment of the quality of a State's water is contained in its biennial Report to Congress required by section 305(b) of the Act.

(c) This report and other assessments of water quality are used in the State's WQM plans to identify priority water

quality problems. These plans also contain the results of the State's analyses and management decisions which are necessary to control specific sources of pollution. The plans recommend control measures and designated management agencies (DMAs) to attain the goals established in the State's water quality standards.

(d) These control measures are implemented by issuing permits, building publicly-owned treatment works (POTWs), instituting best management practices for nonpoint sources of pollution and other means. After control measures are in place, the State evaluates the extent of the resulting improvements in water quality, conducts additional data gathering and planning to determine needed modifications in control measures and again institutes control measures.

(e) This process is a dynamic one, in which requirements and emphases vary over time. At present, States have completed WQM plans which are generally comprehensive in geographic and programmatic scope. Technology based controls are being implemented for most point sources of pollution. However, WQS have not been attained in many water bodies and are threatened in others.

(f) Present continuing planning requirements serve to identify these critical water bodies, develop plans for achieving higher levels of abatement and specify additional control measures. Consequently, this regulation reflects a programmatic emphasis on concentrating planning and abatement activities on priority water quality issues and geographic areas. EPA will focus its grant funds on activities designed to address these priorities. Annual work programs negotiated between EPA and State and interstate agencies will reflect this emphasis.

§ 130.1 Applicability.

(a) This subpart and § 130.51(a) of subpart D applies to all State, eligible Indian Tribe, interstate, areawide and regional and local CWA water quality planning and management activities undertaken on or after February 11, 1985 including all updates and continuing certifications for approved Water Quality Management (WQM) plans developed under sections 208 and 303 of the Act.

(b) Planning and management activities undertaken prior to February 11, 1985 are governed by the requirements of the regulations in effect at the time of the last grant award.

§ 130.2 Definitions.

(a) *The Act.* The Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

(b) *Indian Tribe.* Any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

(c) *Pollution.* The man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water. (See Clean Water Act section 502(19).)

(d) *Pollutant.* Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. This term does not mean : ''sewage from vessels'' within the meaning of section 312 of the Clean Water Act; or water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that such injection or disposal will not result in the degradation of ground or surface water resources. (See Clean Water Act section 502(6).) This definition encompasses drinking water contaminants that are regulated under section 1412 of the Safe Drinking Water Act and may be discharged to waters of the U. S. that are source waters of one or more public water systems. For public water systems served by surface water, source water is any water reaching the intake.

(e) *Load or loading.* An amount of matter or thermal energy that is introduced into a receiving water; to introduce matter or thermal energy into a receiving water. Loading of pollutants may be either man-caused or natural (natural background loading).

(f) *Load allocation.* The portions of a TMDL's pollutant load allocated to nonpoint sources of a pollutant, including atmospheric deposition or natural background sources.

(g) *Wasteload allocation.* The portions of a TMDL's pollutant load allocated to a point source of a pollutant.

(h) *Total maximum daily load (TMDL).* TMDLs are written plans and analyses established to ensure that the waterbody will attain and maintain water quality standards (as defined in 40 CFR 131) including consideration of reasonably foreseeable increases in pollutant loads. TMDLs must be established for waterbodies on Part 1 of your list of impaired and threatened waterbodies and must contain the following ten elements:

(1) The name and geographic location of the impaired or threatened waterbody for which the TMDL is being established;

(2) Identification of the pollutant and quantification of the pollutant load that may be present in the waterbody and still allow attainment and maintenance of water quality standards;

(3) Identification of the amount or degree by which the pollutant load in the waterbody deviates from the load representing attainment or maintenance of water quality standards;

(4) Identification of source categories, source subcategories or individual sources of the pollutant for which wasteload and load allocations are being established;

(5) Wasteload allocations for pollutants from point sources;

(6) Load allocations for pollutants from nonpoint sources;

(7) A margin of safety;

(8) Consideration of seasonal variation;

(9) An allowance for future growth which accounts for reasonably foreseeable increases in pollutant loads; and

(10) An implementation plan.

(i) *Water quality management (WQM) plan.* A State or areawide waste treatment management plan developed and updated in accordance with the provisions of sections 205(j), 208 and 303 of the Act and this regulation.

(j) *Areawide agency.* An agency designated under section 208 of the Act, which has responsibilities for WQM planning within a specified area of a State.

(k) *Best Management Practice (BMP).* Methods, measures or practices selected by an agency to meet its nonpoint source control needs. BMPs include but are not limited to structural and nonstructural controls and operation and maintenance procedures. BMPs can be applied before, during and after pollutant- or pollution-producing activities to reduce or eliminate the introduction of pollutants into or pollution of receiving waters.

(l) *Designated management agency (DMA).* An agency identified by a WQM plan and designated by the Governor to implement specific control recommendations.

(m) *Impaired waterbody.* Any waterbody of the United States that does not attain water quality standards (as defined in 40 CFR part 131) due to an individual pollutant, multiple pollutants, pollution, or an unknown

cause of impairment. Where a waterbody receives a thermal discharge from one or more point sources, impaired means that the waterbody does not have or maintain a balanced indigenous population of shellfish, fish, and wildlife.

(n) *Threatened waterbody.* Any waterbody of the United States that currently attains water quality standards, but for which existing and readily available data and information on adverse declining trends indicate that water quality standards will likely be exceeded by the time the next list of impaired or threatened waterbodies is required to be submitted to EPA. Where a waterbody is threatened by a thermal discharge, threatened means that the waterbody has a balanced indigenous population of shellfish, fish, and wildlife, but adverse declining trends indicate that a balanced indigenous population of shellfish, fish, and wildlife will not be maintained by the time the next list of impaired or threatened waterbodies is required to be submitted to EPA.

(o) *Thermal discharge.* The discharge of the pollutant heat from a point source.

(p) *Reasonable assurance.* Reasonable assurance means that you demonstrate that each wasteload allocation and load allocation in a TMDL will be implemented. For point sources regulated under section 402 of the Clean Water Act you must demonstrate reasonable assurance by procedures that ensure that enforceable NPDES permits (including coverage to individual sources under a general NPDES permit) will be issued expeditiously to implement applicable wasteload allocations for point sources. For nonpoint sources you must demonstrate reasonable assurance by specific procedures and mechanisms that ensure load allocations for nonpoint sources will be implemented for that waterbody. Specific procedures and mechanisms for nonpoint sources must apply to the pollutant for which the TMDL is being established, must be implemented expeditiously and must be supported by adequate funding. Examples of specific procedures and mechanisms which may provide reasonable assurance for nonpoint sources include State, Territorial, and authorized Tribal regulations, local ordinances, performance bonds, contracts, cost-share agreements, memorandums of understanding, site-specific or watershed-specific voluntary actions, and compliance audits of best management practices.

(q) *Waterbody.* A geographically defined portion of navigable waters, waters of the contiguous zone, and ocean waters under the jurisdiction of the United States, including segments of rivers, streams, lakes, wetlands, coastal waters and ocean waters.

(r) *List of Impaired or Threatened Waterbodies or "List".* The list of impaired or threatened waterbodies that States, Territories and authorized Tribes are required to submit to EPA pursuant to section 303(d) of the CWA and this part 130.

Subpart B—Water Quality Monitoring and Reporting

§ 130.10 Water quality monitoring.

(a) In accordance with section 106(e)(1), States must establish appropriate monitoring methods and procedures (including biological monitoring) necessary to compile and analyze data on the quality of waters of the United States and, to the extent practicable, ground-waters. This requirement need not be met by Indian Tribes. However, any monitoring and/or analysis activities undertaken by a Tribe must be performed in accordance with EPA's quality assurance/quality control guidance (*Policy and Program Requirements to Implement the Mandatory Quality Assurance Program,* EPA Order 5360.1, April 3, 1984 as updated on July 16, 1998; available from: http//ES.epa.gov/ncerqa/qa/qa__docs.html).

(b) The State's water monitoring program shall include collection and analysis of physical, chemical and biological data and quality assurance and control programs to assure scientifically valid data. The uses of these data include determining abatement and control priorities; developing and reviewing water quality standards, total maximum daily loads, wasteload allocations and load allocations; assessing compliance with National Pollutant Discharge Elimination System (NPDES) permits by dischargers; reporting information to the public through the section 305(b) report and reviewing site-specific monitoring efforts and source water assessments conducted under the Safe Drinking Water Act.

§ 130.11 Water quality report.

(a) Each State shall prepare and submit biennially to the Regional Administrator a water quality report in accordance with section 305(b) of the Act. The water quality report serves as the primary assessment of State water quality. Based upon the water quality data and problems identified in the 305(b) report, States develop water quality management (WQM) plan elements to help direct all subsequent control activities. Water quality problems identified in the 305(b) report should be analyzed through water quality management planning leading to the development of alternative controls and procedures for problems identified in the latest 305(b) report. States may also use the 305(b) report to describe ground-water quality and to guide development of ground-water plans and programs. Water quality problems identified in the 305(b) report should be emphasized and reflected in the State's WQM plan and annual work program under sections 106 and 205(j) of the Clean Water Act and where the designated use includes public water supply, in the source water assessment conducted under the SDWA.

(b) Each such report shall include but is not limited to the following:

(1) A description of the water quality of all waters of the United States and the extent to which the quality of waters provides for the protection and propagation of a balanced population of shellfish, fish, and wildlife and allows recreational activities in and on the water.

(2) An estimate of the extent to which CWA control programs have improved water quality or will improve water quality for the purposes of paragraph (b)(1) of this section, and recommendations for future actions necessary and identifications of waters needing action.

(3) An estimate of the environmental, economic and social costs and benefits needed to achieve the objectives of the CWA and an estimate of the date of such achievement.

(4) A description of the nature and extent of nonpoint source pollution and recommendations of programs needed to control each category of nonpoint sources, including an estimate of implementation costs.

(5) An assessment of the water quality of all publicly owned lakes, including the status and trends of such water quality as specified in section 314(a)(1) of the Clean Water Act.

(c) States may include a description of the nature and extent of ground-water pollution and recommendations of State plans or programs needed to maintain or improve ground-water quality.

(d) In the years in which it is prepared the biennial section 305(b) report satisfies the requirement for the annual water quality report under section 205(j). In years when the 305(b) report is not required, the State may satisfy the annual section 205(j) report requirement by certifying that the most recently submitted section 305(b) report is current or by supplying an update of the

sections of the most recently submitted section 305(b) report which require updating.

Subpart C: Identifying Impaired and Threatened Waterbodies and Establishing Total Maximum Daily Loads (TMDLs)

What This Subpart Covers

§ 130.20 Who must comply with subpart C of this rule?

(a) Subpart C applies to States, Territories, and authorized Tribes. The term ''you'' in this rule refers to these three governmental entities.

(b) Portions of this subpart apply to the United States Environmental Protection Agency (EPA). When this is the case, the rule specifies EPA's responsibilities and obligations.

§ 130.21 What is the purpose of this subpart?

This rule explains how you must identify and list impaired or threatened waterbodies and establish TMDLs in accordance with section 303(d) of the Clean Water Act. The rule also explains how EPA reviews and approves or disapproves your lists and TMDLs. Specifically, the rule explains how:

(a) You must assemble all existing and readily available data and information;

(b) You must document your methodology for considering and evaluating all existing and readily available data and information to make listing decisions, including priority ranking, and provide the methodology to EPA and the public;

(c) You must identify the impaired and threatened waterbodies to be included on the list and decide which of those waterbodies will have TMDLs established for them;

(d) You must identify the pollutant or pollutants causing the impairment or threat of impairment for all waterbodies on your list that will have TMDLs established for them;

(e) You must assign a priority ranking to all waterbodies on your list that will have TMDLs established for them;

(f) You must establish a schedule for establishing all TMDLs;

(g) EPA must review and approve or disapprove your list of impaired and threatened waterbodies, identification of pollutants, and priority ranking;

(h) You must establish TMDLs and submit them to EPA for review;

(i) EPA must review and approve or disapprove your TMDLs;

(j) You must provide for public notice and comment on your list, priority ranking, schedule, and TMDLs prior to final submission to EPA.

Identifying and Listing Impaired or Threatened Waterbodies, Documenting Your Approach for Making Listing Decisions, and Establishing a Schedule for TMDL Development

§ 130.22 What data and information must you assemble to identify and list impaired or threatened waterbodies?

(a) You must assemble and consider all existing and readily available data and information when you develop your list of impaired or threatened waterbodies.

(b) Existing and readily available data and information, includes but is not limited to, the data and information in the following:

(1) Your most recent EPA approved section 303(d) list;

(2) Your most recent Clean Water Act section 305(b) report;

(3) Clean Water Act section 319 nonpoint source assessments;

(4) Drinking water source water assessments under section 1453 of the Safe Drinking Water Act;

(5) Dilution calculations, trend analyses, or predictive models for determining the physical, chemical or biological integrity of streams, rivers, lakes, and estuaries; and

(6) Data, information, and water quality problems reported from local, State, Territorial, or Federal agencies (especially the U.S. Geologic Survey National Water Quality Assessment (NAWQA) and National Stream Quality Accounting Network (NASQAN)), Tribal governments, members of the public, and academic institutions.

§ 130.23 How do you document your approach for considering and evaluating all existing and readily available data and information to develop your list and priority rankings?

(a) You must develop a methodology that explains how you will consider and evaluate all existing and readily available data and information to determine which waterbodies you will include on your list, and to determine priority rankings for those waterbodies. You must develop a draft methodology, notify the public of the availability of the draft methodology, take comments on the draft methodology for no less than 60 days, and provide a summary of all comments received and your responses when you submit the final methodology to EPA, as required by § 130.24 of this subpart.

(b) The methodology must include the factors you use to consider and evaluate the following types of data and information when you make listing decisions:

(1) Physical/chemical data and information;

(2) Biological data and information;

(3) Aquatic and riparian habitat data and information; and

(4) Waterbody impairment and drinking water susceptibility analyses required under § 130.22(b).

(c) Your methodology must, at a minimum, identify those types of data and information that you will treat as ''existing and readily available'' and explain how you consider the following factors in making listing and priority ranking decisions:

(1) Data quality and age;

(2) Degree of confidence you have in the information you use to determine whether waterbodies are impaired or threatened; and

(3) Number and degree of exceedances of numeric or narrative criteria and designated uses used to determine whether waterbodies are impaired or threatened.

(d) Your methodology must, at a minimum, also include the following:

(1) A description of the selection factors you will use to include waterbodies on your list;

(2) A process for resolving disagreements with other jurisdictions involving waterbodies crossed by State or authorized Tribal or international boundaries; and

(3) A description of the method and factors you use to assign a priority ranking to the waterbodies on your list.

(e) Your methodology must describe how and for what reasons you will remove previously listed waterbodies from your list.

§ 130.24 When must your methodology be submitted to EPA?

(a) You must submit the final methodology described in § 130.23 to EPA by January 31 of every [second], [fourth], [fifth] year, beginning in the year 2000.

(b) Following submittal, EPA will review your methodology and may, as appropriate, provide you with comments in advance of your list submission.

(c) EPA will not approve or disapprove your methodology, but will consider your methodology in its review and approval or disapproval of your list and priority rankings.

§ 130.25 What is the scope of your list of impaired or threatened waterbodies?

(a) Your list must include all waterbodies that, based on all existing and readily available data and information, are impaired or threatened by individual pollutants, multiple pollutants, or pollution from any source.

(b) Your list must include impaired or threatened waterbodies regardless of whether:

(1) The waterbodies are impaired or threatened by a pollutant which is unknown at the time of the listing;

(2) The waterbodies are impaired or threatened by atmospheric deposition;

(3) The waterbodies are impaired or threatened only by point sources, only by nonpoint sources, or by a combination of point and nonpoint sources.

§ 130.26 How do you apply your water quality standards antidegradation policy to the listing of impaired and threatened waterbodies?

(a) Water quality standards as defined at 40 CFR part 131 include several requirements, including one for a State antidegradation policy. Your list must include waterbodies consistent with your antidegradation policy as follows:

(1) Any Tier 3 waterbody is impaired and must be listed when the level of water quality that existed at the time the waterbody was designated as Tier 3 has declined.

(2) Any Tier 2 waterbody is threatened and must be listed when adverse trend data and information indicates that a designated use will no longer be attained by the time of the next listing cycle.

(3) Any Tier 1 waterbody is impaired and must be listed if it is not maintaining a designated or more protective existing use. Any Tier 1 waterbody is threatened and must be listed when an adverse trend indicates that a designated use or a more protective existing use will no longer be attained at the time of the next listing cycle.

§ 130.27 How must you format your list of impaired or threatened waterbodies?

(a) Your list of impaired and threatened waterbodies must include the following parts:

(1) Part 1—Waterbodies impaired or threatened by one or more pollutant(s) as defined by 40 CFR 130.2(d) or by an unknown cause unless listed in Part 3 or 4 of the list. Where the cause of the impairment or threat is unknown, identification of the pollutant(s) causing the impairment or threat is required as the first step in establishing the TMDL. A TMDL is required for waterbodies on Part 1 of the list impaired by pollutants.

(2) Part 2—Waterbodies impaired or threatened by pollution as defined by 40 CFR 130.2(c) but not impaired or threatened by one or more pollutants. A TMDL is not required for waterbodies on Part 2 of the list.

(3) Part 3—Waterbodies for which EPA has approved or established a TMDL and water quality standards have not yet been attained.

(4) Part 4—Waterbodies that are impaired, for which implementation of best practicable control technology for point sources and secondary treatment for publicly owned treatment works or controls enforceable by State, Territorial or authorized Tribal or Federal law or regulation are expected to result in attainment of water quality standards by the next listing cycle. A TMDL is not required for waterbodies on part 4 of the list. If a waterbody listed on part 4 does not attain water quality standards by the time the next list is required to be submitted to EPA, such waterbody must be included on part 1 of the list unless you can document that the failure to attain water quality standards is due to failure to comply with applicable technology-based requirements.

(b) You must identify the pollutant or pollutants causing the impairment or threat of impairment for each waterbody on Parts 1, 3 and 4 of the list. If the specific pollutant is unknown at the time of listing, you must, to the extent possible, identify the class of pollutants, e.g., metals, pesticides, industrial chemicals, or nutrients. You must identify the type of pollution causing the impairment or threat of impairment for each waterbody on Part 2 of the list. If you do not know whether the cause of impairment is a pollutant or some type of pollution, the waterbody must be included on Part 1 of the list.

(c) You must identify the geographical location of each waterbody on the list, using a nationally recognized georeferencing system as agreed to by you and EPA.

§ 130.28 How do you prioritize the waterbodies on Part 1 of your list?

(a) You must assign a high, medium, or low priority ranking to each waterbody and pollutant combination on Part 1 of the list, taking into account the severity of the impairment or threatened impairment and the designated uses of the waterbody.

(b) You must assign a high priority to waterbody and pollutant combinations on Part 1 of the List if:

(1) The waterbody is designated in water quality standards as a public drinking water supply, used as a source of drinking water and the pollutant for which the waterbody is listed as impaired is contributing to a violation of an MCL; or

(2) species listed as threatened or endangered under section 4 of the Endangered Species Act are present in the waterbody unless the State, Territory or authorized Tribe shows that the impairment does not affect the listed threatened or endangered species.

(3) When identifying your high priority waterbodies, you may also consider the presence of sensitive aquatic species and secondary factors such as the historical, cultural, economic and aesthetic uses of the waterbody.

(c) You must explain how you considered the severity of the impairment or threat of impairment and the designated use to be made of the waterbody in assigning each priority ranking.

(d) You may consider other factors in assigning each priority ranking, including efficiencies gained by developing TMDLs for waterbodies located in the same watershed; the value and vulnerability of particular waterbodies; the recreational, economic, and aesthetic importance of particular waterbodies; TMDL complexity; the degree of public interest and support; State, Territorial and authorized Tribal policies and priorities; or national policies and priorities.

(e) If you consider other factors, you must identify each factor and explain how you used each factor in assigning each priority ranking.

§ 130.29 When can you remove a waterbody from your list?

(a) Once listed, you must keep each impaired waterbody on the list until water quality standards are attained for that waterbody.

(b) You may remove a previously listed impaired waterbody when you develop your next list if new data or information indicates that the waterbody has attained water quality standards.

(c) You must keep each threatened waterbody on the list until the waterbody is no longer threatened.

(d) You may remove a previously listed threatened waterbody from the list if new data or information indicates that the waterbody is no longer threatened.

§ 130.30 When must you submit your list of impaired or threatened waterbodies and priority rankings to EPA and what will EPA do with it?

(a) You must submit your list of impaired and threatened waterbodies as required by §§ 130.25, 130.26, and 130.27, and the priority rankings required by § 130.28, to EPA by October 1 of every [second] [fourth] [fifth] year, beginning in the year 2000.

(b) Within 30 days of receipt, EPA will issue an order approving or disapproving all or a portion of your list and priority ranking.

(c) You must incorporate into your water quality management plan, as

required by § 130.51, those portions of your list and priority ranking that EPA approves.

(d) If EPA disapproves a portion of your list, including your identification of particular waterbodies and pollutant/pollution combinations, or your priority rankings, EPA will, within 30 days, issue an order identifying all waterbodies and pollutant/pollution combinations or priority rankings needed to make the list consistent with this subpart. EPA will publish this order in the **Federal Register** and a general circulation newspaper and request public comment for at least 30 days. If appropriate, EPA will write an order revising the list after the close of the public comment period. EPA will send you a copy of its order identifying additional waterbodies and priority ranking. You must incorporate those waterbodies into your water quality management plan.

(e) EPA may establish a list of impaired and threatened waterbodies, including pollutant/pollution combinations and priority rankings, if you ask EPA to do so, or if EPA determines that you have not or are not likely to establish such list consistent with the schedule specified in paragraph (a) of this section.

§ 130.31 What must your schedule for submitting TMDLs to EPA contain and when must you submit it to EPA?

(a) You must submit a schedule to EPA for establishing TMDLs for all waterbody and pollutant combinations on Part 1 of your list, as described in § 130.27, including waterbodies for which the cause of the impairment or threat was not known at the time of listing.

(1) You must schedule establishment of TMDLs as expeditiously as practicable, but no later than 15 years from the date of the initial listing on Part 1 of your list.

(2) Your schedule for establishment of TMDLs must reasonably pace the workload for TMDL establishment over the entire duration of the schedule.

(3) You should schedule establishment of TMDLs in accordance with the priority rankings required in § 130.28. For example, TMDLs for high-priority waterbodies and pollutant combinations should be established before medium and low-priority waterbody and pollutant combinations. Your schedule may consider other factors including those identified in § 130.28(d).

(b) You must submit your schedule for establishing TMDLs to EPA by October 1 of every [second] [fourth] [fifth] year, beginning in the year 2000, along with your list of impaired and threatened waterbodies and priority rankings.

(c) EPA will not approve or disapprove your schedule, but will consider your schedule in its review of your list and priority ranking.

Establishment and EPA Review of TMDLs

§ 130.32 Must you establish TMDLs?

(a) You must establish a TMDL for all waterbodies and pollutant combinations on Part 1 of your list. You do not need to establish TMDLs for waterbodies on Parts 2, 3, and 4 of your list.

(b) You must establish TMDLs in accordance with the priority rankings established in accordance with § 130.28.

(c) You may establish TMDLs in a different order than the sequence in your most recently submitted schedule as long as you establish TMDLs consistent with the scheduling requirements of § 130.31(a)(1) through (a)(3).

§ 130.33 What are the minimum elements of a TMDL submitted to EPA?

(a) TMDLs are written plans and analyses for achieving water quality standards for waterbodies on Part 1 of your list of impaired and threatened waterbodies. TMDLs provide the opportunity to compare relative contributions from all sources and consider technical and economic trade-offs between point and nonpoint sources.

(b) You must include the following minimum elements in any TMDL submitted to EPA. EPA will not approve a TMDL which does not contain each of these elements.

(1) The name and geographic location, as required by § 130.27(c), of the impaired or threatened waterbody for which the TMDL is being established and the names and geographic locations of the waterbodies upstream of the impaired waterbody that contribute significant amounts of the pollutant for which the TMDL is being established;

(2) Identification of the pollutant for which the TMDL is being established and quantification of the pollutant load that may be present in the waterbody and still ensure attainment and maintenance of water quality standards;

(3) Identification of the amount or degree by which the current pollutant load in the waterbody deviates from the pollutant load needed to attain or maintain water quality standards;

(4) Identification of the source categories, source subcategories, or individual sources of the pollutant for which the wasteload allocations and load allocations are being established consistent with § 130.2(f) and (g);

(5) Wasteload allocations to each industrial and municipal point source permitted under section 402 of the Clean Water Act discharging the pollutant for which the TMDL is being established; wasteload allocations for discharges subject to a general permit, such as storm water, combined sewer overflows, abandoned mines, or combined animal feeding operations, may be allocated to categories of sources, subcategories of sources or individual sources; pollutant loads that do not need to be reduced to attain or maintain water quality standards may be included within a category of sources, subcategory of sources or considered as part of background loads; and supporting technical analyses demonstrating that wasteload allocations when implemented, will attain and maintain water quality standards;

(6) Load allocations, ranging from reasonably accurate estimates to gross allotments, to nonpoint sources of a pollutant, including atmospheric deposition or natural background sources; if possible, a separate load allocation must be allocated to each source of a pollutant, natural background or atmospheric deposition; where this is not possible, load allocations may be allocated to categories of sources or subcategories of sources; pollutant loads that do not need to be reduced for the waterbody to meet water quality standards may be included within a category of sources, subcategory of sources or considered as part of background loads; and supporting technical analyses demonstrating that load allocations, when implemented, will attain and maintain water quality standards;

(7) A margin of safety expressed as unallocated assimilative capacity or conservative analytical assumptions used in establishing the TMDL; e.g., derivation of numeric loads, modeling assumptions, or effectiveness of proposed management actions which ensures attainment and maintenance of water quality standards for the allocated pollutant;

(8) Consideration of seasonal variations and environmental factors that affect the relationship between pollutant loadings and water quality impacts;

(9) An allowance for future growth, if any, which accounts for reasonably foreseeable increases in pollutant loads; and

(10) An implementation plan, which may be developed for one or a group of

TMDLs. Each implementation plan must, at a minimum, include the following:

(i) A description of the control actions and/or management measures which will be implemented to achieve the wasteload allocations and load allocations, and a demonstration that the control actions and/or management measures are expected to achieve the required pollutant loads;

(ii) A timeline, including interim milestones, for implementing the control actions and/or management measures, including when source-specific activities will be undertaken for categories and subcategories of individual sources and a schedule for revising NPDES permits;

(iii) A discussion of your reasonable assurances, as defined at § 130.2(p), that wasteload allocations and load allocations will be implemented;

(iv) A description of the legal authority under which the control actions will be carried out;

(v) An estimate of the time required to attain and maintain water quality standards and discussion of the basis for that estimate;

(vi) A monitoring and/or modeling plan designed to determine the effectiveness of the control actions and/or management measures and whether allocations are being met;

(vii) A description of measurable, incremental milestones for the pollutant for which the TMDL is being established for determining whether the control actions and/or management measures are being implemented and whether water quality standards are being attained; and

(viii) A description of your process for revising TMDLs if the milestones are not being met and projected progress toward attaining water quality standards is not demonstrated.

(c) For waterbodies impaired by thermal discharges from point sources you must estimate the total maximum daily thermal load required to ensure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife, taking into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and dissipative capacity of the waterbody for which the TMDL is being established. Estimates must include a calculation of the maximum heat input and a margin of safety that takes into account any lack of knowledge concerning the development of thermal water quality criteria.

(d) A TMDL must not be likely to jeopardize the continued existence of an endangered or threatened species listed under section 4 of the Endangered Species Act or result in the destruction or adverse modification of its designated critical habitat.

§ 130.34 How are TMDLs expressed?

(a) A TMDL must contain an expression of the pollutant load or load reduction necessary to ensure that the waterbody will attain and maintain water quality standards, or, as appropriate, the pollutant load or load reduction required to attain and maintain aquatic or riparian habitat, biological, channel or geomorphological or other conditions that represent attainment and maintenance of water quality standards.

(b) As appropriate to the characteristics of the waterbody and pollutant, the pollutant load may be expressed as daily, monthly, seasonal or annual averages in one or more of the following ways:

(1) The pollutant load that can be present in the waterbody and ensure that it attains and maintains water quality standards;

(2) The reduction from current pollutant loads required to attain and maintain water quality standards;

(3) The pollutant load or reduction of pollutant load required to attain and maintain riparian, biological, channel or geomorphological measures so that water quality standards are attained and maintained; or

(4) The pollutant load or reduction of pollutant load that results from modifying a characteristic of the waterbody, e.g., riparian, biological, channel, geomorphological, or chemical characteristics, so that water quality standards are attained and maintained.

§ 130.35 What actions must EPA take on TMDLs that are submitted for review?

(a) EPA will review each TMDL you submit to determine if it includes all the minimum elements specified in § 130.33(b). A TMDL which does not include all minimum elements will be disapproved.

(b) EPA will review each TMDL you submit to determine if those elements meet the requirements of §§ 130.32, 130.33 and 130.34. EPA will approve the TMDL if it meets those requirements. EPA will issue an order approving or disapproving each TMDL you submit within 30 days after you submit it.

(c) If EPA approves a TMDL you submit, you must incorporate the TMDL into your water quality management plan.

(d) If EPA disapproves a TMDL you submit, EPA will issue an order establishing a new TMDL for that waterbody and pollutant within 30 days of its disapproval.

(1) EPA will publish this order in the **Federal Register** and a general circulation newspaper and request public comment for at least 30 days. If appropriate, EPA will issue an order revising the TMDL after the close of the public comment period.

(2) EPA will send you the final TMDL it establishes. You must incorporate the EPA-established TMDL into your water quality management plan.

§ 130.36 Can EPA establish a TMDL if you fail to do so?

EPA may establish TMDLs for waterbodies and pollutants identified on Part 1 of your list if you ask EPA to do so, or if EPA determines that you have not or are not likely to establish TMDLs consistent with your schedule, or if EPA determines that it should establish TMDLs for interstate or boundary waterbodies.

Public Participation

§ 130.37 What public participation requirements apply to your lists, priority rankings, schedule, and TMDLs?

(a) You must provide the public with no less than 30 days to review and comment on your list of impaired or threatened waterbodies, priority rankings, schedule, and TMDLs prior to submission to EPA.

(b) At the time you make your submission to EPA, you must provide EPA with a summary of all public comments received on your list of impaired or threatened waterbodies, priority rankings, schedule, and TMDLs and your response to all comments, indicating how the comments were considered in your final decision. Your response to each comment must indicate whether you agreed or disagreed with the comment. If you disagreed with the comment, your response must explain why you disagreed and why you believe it was reasonable to act despite the comment.

(c) You must provide for public participation in developing your listing methodology according to the requirements in § 130.23(a).

(d)(1) Prior to your submission to EPA and at the time that you provide the public the opportunity to review and comment on your list of impaired or threatened waterbodies, priority rankings, schedules, and TMDLs, you must provide a copy of each of these documents to EPA, US Fish and Wildlife Services, and to National Marine Fisheries Service where appropriate (e.g., coastal areas), unless you request EPA to provide these documents to the Services, in which case EPA will do so.

(2) You are encouraged to establish processes with both the US Fish and Wildlife and Wildlife Service and the National Marine Fisheries that will provide for the early identification and resolution of threatened and endangered species concerns as they relate to your list of impaired or threatened waterbodies, priority rankings, schedule, and TMDLs. To facilitate consideration of endangered and threatened species in the listing and TMDL process, EPA will ask U.S. Fish and Wildlife and National Fisheries Services, where appropriate, to provide you and EPA with any comments that they may have on your lists, priority rankings, schedule and TMDLs

(3) You must consider any comments from EPA, US Fish and Wildlife Service, or National Marine Fisheries Service and document your consideration in accordance with paragraph (b) of the section.

(4) EPA will review any comments submitted by US Fish Service or National Marine Fisheries and consider how you addressed EPA, US Fish and Wildlife Service, and National Marine Fisheries Service comments prior to EPA's approval or disapproval of your submission.

Transitional TMDLs

§ 130.38 What is the effect of the proposed rule on transitional TMDLs?

(a) EPA will approve any TMDL submitted to it for review within 12 months of the effective date of the final rule if the TMDL meets either the pre-amendment requirements in § 130.7 or the post-amendment requirements in §§ 130.32, 130.33 and 130.34.

(b) EPA may establish TMDLs within 12 months of the effective date of the final rule either according to the pre-amendment requirements in § 130.7 or the post-amendment requirements in §§ 130.32, 130.33 and 130.34.

Subpart D—Water Quality Planning and Implementation

§ 130.50 Continuing planning process

(a) *General.* Each State shall establish and maintain a continuing planning process (CPP) as described under section 303(e)(3)(A)–(H) of the Act. Each State is responsible for managing its water quality program to implement the processes specified in the continuing planning process. EPA is responsible for periodically reviewing the adequacy of the State's CPP.

(b) *Content.* The State may determine the format of its CPP as long as the minimum requirements of the CWA and this regulation are met. A State CPP need not be a single document, provided the State identifies in one document, i.e., an index, the other documents, statutes, rules, policies and guidance that comprise its CPP. The following processes must be described in each State CPP and the State may include other processes, including watershed-based planning and implementation, at its discretion.

(1) The process for developing effluent limitations and schedules of compliance at least as stringent as those required by sections 301(b) (1) and (2), 306 and 307, and at least stringent as any requirements contained in applicable water quality standards in effect under authority of section 303 of the Act.

(2) The process for incorporating elements of any applicable areawide waste treatment plans under section 208, and applicable basin plans under section 209 of the Act.

(3) The process for developing total maximum daily loads (TMDLs) and individual water quality based effluent limitations for pollutants in accordance with section 303(d) of the Act and §§ 130.32–36 of this regulation.

(4) The process for updating and maintaining Water Quality Management (WQM) plans, including schedules for revision.

(5) The process for assuring adequate authority for intergovernmental cooperation in the implementation of the State WQM program.

(6) The process for establishing and assuring adequate implementation of new or revised water quality standards, including schedules of compliance, under section 303(c) of the Act.

(7) The process for assuring adequate controls over the disposition of all residual waste from any water treatment processing.

(8) The process for developing an inventory and ranking, in order of priority of needs for construction of waste treatment works required to meet the applicable requirements of sections 301 and 302 of the Act.

(9) The process for determining the priority of permit issuance.

(c) *Regional Administrator review.* The Regional Administrator shall review approved State CPPs from time to time to ensure that the planning processes are consistent with the Act and this regulation. The Regional Administrator shall not approve any permit program under Title IV of the Act for any State which does not have an approved continuing planning process.

§ 130.51 Water quality management plans

(a) *Water quality management plans.* You must base continuing water quality planning on initial water quality management plans. Your annual water quality planning should focus on priority issues and geographic areas and have a watershed focus. Water quality planning should be directed at the removal of conditions placed on previously certified and approved water quality management plans and updates to support the implementation of wasteload allocations and load allocations contained in TMDLs.

(b) *Use of WQM plans.* WQM plans are used to direct implementation. WQM plans draw upon the water quality assessments to identify priority point and nonpoint water quality problems, consider alternative solutions and recommend control measures, including the financial and institutional measures necessary for implementing recommended solutions. State annual work programs shall be based upon the priority issues identified in the State WQM plan.

(c) *WQM plan elements.* Sections 205(j), 208 and 303 of the Act specify water quality planning requirements. The following plan elements shall be included in the WQM plan or referenced as part of the WQM plan if contained in separate documents when they are needed to address water quality problems.

(1) *Total Maximum Daily Loads.* TMDLs in accordance with § 303(d) and (e)(3)(C) of the Act and §§ 130.2 and 130.32–36.

(2) *Effluent limitations.* Effluent limitations including water quality based effluent limitations and schedules of compliance in accordance with section 303(e)(3)(A) of the Act and § 130.50 of this part.

(3) *Municipal and industrial waste treatment.* Identification of anticipated municipal and industrial waste treatment works, including facilities for treatment of stormwater-induced combined sewer overflows; programs to provide necessary financial arrangements for such works; establishment of construction priorities and schedules for initiation and completion of such treatment works including an identification of open space and recreation opportunities from improved water quality in accordance with section 208(b)(2) (A) and (B) of the Act.

(4) *Nonpoint source management and control.* (i) The plan shall describe the regulatory and non-regulatory programs, activities and Best Management Practices (BMPs) which the agency has selected as the means to control nonpoint source pollution where necessary to protect or achieve approved water uses. Economic,

institutional, and technical factors shall be considered in a continuing process of identifying control needs and evaluating and modifying the BMPs as necessary to achieve water quality goals.

(ii) Regulatory programs shall be identified where they are determined to be necessary by the State to attain or maintain an approved water use or where non-regulatory approaches are inappropriate in accomplishing that objective.

(iii) BMPs shall be identified for the nonpoint sources identified in section 208(b)(2)(F)–(K) of the Act and other nonpoint sources as follows:

(A) *Residual waste.* Identification of a process to control the disposition of all residual waste in the area which could affect water quality in accordance with section 208(b)(2)(J) of the Act.

(B) *Land disposal.* Identification of a process to control the disposal of pollutants on land or in subsurface excavations to protect ground and surface water quality in accordance with section 208(b)(2)(K) of the Act.

(C) *Agricultural and silvicultural.* Identification of procedures to control agricultural and silvicultural sources of pollution in accordance with section 208(b)(2)(F) of the Act.

(D) *Mines.* Identification of procedures to control mine-related sources of pollution in accordance with section 208(b)(2)(G) of the Act.

(E) *Construction.* Identification of procedures to control construction related sources of pollution in accordance with section 208(b)(2)(H) of the Act.

(F) *Saltwater intrusion.* Identification of procedures to control saltwater intrusion in accordance with section 208(b)(2)(i) of the Act.

(G) *Urban stormwater.* Identification of BMPs for urban stormwater control to achieve water quality goals and fiscal analysis of the necessary capital and operations and maintenance expenditures in accordance with section 208(b)(2)(A) of the Act.

(iv) The nonpoint source plan elements outlined in § 130.51(c)(4)(iii)(A)–(G) of this regulation shall be the basis of water quality activities implemented through agreements or memoranda of understanding between EPA and other departments, agencies or instrumentalities of the United States in accordance with section 304(k) of the Act.

(5) *Management agencies.* Identification of agencies necessary to carry out the plan and provision for adequate authority for intergovernmental cooperation in accordance with sections 208(b)(2)(D) and 303(e)(3)(E) of the Act. Management agencies must demonstrate the legal, institutional, managerial and financial capability and specific activities necessary to carry out their responsibilities in accordance with section 208(c)(2)(A) through (I) of the Act.

(6) *Implementation measures.* Identification of implementation measures necessary to carry out the plan, including financing, the time needed to carry out the plan, and the economic, social and environmental impact of carrying out the plan in accordance with section 208(b)(2)(E).

(7) *Dredge or fill program.* Identification and development of programs for the control of dredge or fill material in accordance with section 208(b)(4)(B) of the Act.

(8) *Basin plans.* Identification of any relationship to applicable basin plans developed under section 209 of the Act.

(9) *Ground water.* Identification and development of programs for control of ground-water pollution including the provisions of section 208(b)(2)(K) of the Act. States are not required to develop ground-water WQM plan elements beyond the requirements of section 208(b)(2)(K) of the Act, but may develop a ground-water plan element if they determine it is necessary to address a ground-water quality problem. If a State chooses to develop a ground-water plan element, it should describe the essentials of a State program and should include, but is not limited to:

(i) Overall goals, policies and legislative authorities for protection of ground-water.

(ii) Monitoring and resource assessment programs in accordance with section 106(e)(1) of the Act.

(iii) Programs to control sources of contamination of ground-water including Federal programs delegated to the State and additional programs authorized in State statutes.

(iv) Procedures for coordination of ground-water protection programs among State agencies and with local and Federal agencies.

(v) Procedures for program management and administration including provision of program financing, training and technical assistance, public participation, and emergency management.

(d) *Indian Tribes.* An Indian Tribe is eligible for the purposes of this rule and the Clean Water Act assistance programs under 40 CFR part 35, subparts A and H if:

(1) The Indian Tribe has a governing body carrying out substantial governmental duties and powers;

(2) The functions to be exercised by the Indian Tribe pertain to the management and protection of water resources which are held by an Indian Tribe, held by the United States in trust for Indians, held by a member of an Indian Tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation; and

(3) The Indian Tribe is reasonably expected to be capable, in the Regional Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Clean Water Act and applicable regulations.

(e) *Update and certification.* State and/or areawide agency WQM plans shall be updated as needed to reflect changing water quality conditions, results of implementation actions, new requirements or to remove conditions in prior conditional or partial plan approvals. Regional Administrators may require that State WQM plans be updated as needed. State Continuing Planning Processes (CPPs) shall specify the process and schedule used to revise WQM plans. The State shall ensure that State and areawide WQM plans together include all necessary plan elements and that such plans are consistent with one another. The Governor or the Governor's designee shall certify by letter to the Regional Administrator for EPA approval that WQM plan updates are consistent with all other parts of the plan. The certification may be contained in the annual State work program.

(f) *Consistency.* Construction grant and permit decisions must be made in accordance with certified and approved WQM plans as described in §§ 130.63(a) and 130.63(b).

Subpart E—Miscellaneous Provisions

§ 130.60 Designation and de-designation.

(a) *Designation.* Areawide planning agencies may be designated by the Governor in accordance with section 208(a) (2) and (3) of the Act or may self-designate in accordance with section 208(a)(4) of the Act. Such designations shall subject to EPA approval in accordance with section 208(a)(7) of the Act.

(b) *De-designation.* The Governor may modify or withdraw the planning designation of a designated planning agency other than an Indian tribal organization self-designated § 130.51(c)(2) if:

(1) The areawide agency requests such cancellation; or

(2) The areawide agency fails to meet its planning requirements as specified

in grant agreements, contracts or memoranda of understanding; or

(3) The areawide agency no longer has the resources or the commitment to continue water quality planning activities within the designated boundaries.

(c) *Impact of de-designation.* Once an areawide planning agency's designation has been withdrawn the State agency shall assume direct responsibility for continued water quality planning and oversight of implementation within the area.

(d) *Designated management agencies* (DMA). In accordance with section 208(c)(1) of the Act, management agencies shall be designated by the Governor in consultation with the designated planning agency. EPA shall approve such designations unless the DMA lacks the legal, financial and managerial authority required under section 208(c)(2) of the Act. Designated management agencies shall carry out responsibilities specified in Water Quality Management (WQM) plans. Areawide planning agencies shall monitor DMA activities in their area and recommend necessary plan changes during the WQM plan update. Where there is no designated areawide planning agency, States shall monitor DMA activities and make any necessary changes during the WQM plan update.

§ 130.61 State submittal to EPA.

(a) The following must be submitted regularly by the States to EPA:

(1) The section 305(b) report, in FY 84 and every two years thereafter, and the annual section 205(j) certification or update of the 305(b) water quality report.

(2) The annual State work program(s) under sections 106 and 205(j) of the Act.

(3) Revisions or additions to water quality standards (WQS) (303(c)).

(b) The Act also requires that each State initially submit to EPA and revise as necessary the following:

(1) Continuing planning process (CPP) (303(e));

(2) Identification of water quality-limited waters still requiring TMDLs (section 303(d)), pollutants, and the priority ranking including waters targeted for TMDL development within the next two years as required under § 130.7(b) in accordance with the schedule set for in § 130.7(d)(1).

(3) Total maximum daily loads (TMDLs) (303(d)); and

(4) Water quality management (WQM) plan and certified and approved WQM plan updates (208, 303(e)).

(c) The form and content of required State submittals to EPA may be tailored to reflect the organization and needs of the State, as long as the requirements and purposes of the Act, this part and, where applicable, 40 CFR parts 29, 30, 33 and 35, subparts A and J are met. The need for revision and schedule of submittals shall be agreed to annually with EPA as the States annual work program is developed.

§ 130.62 Program management.

(a) State agencies may apply for grants under sections 106, 205(j) and 205(g) to carry out water quality planning and management activities. Interstate agencies may apply for grants under section 106 to carry out water quality planning and management activities. Local or regional planning organizations may request 106 and 205(j) funds from a State for planning and management activities. Grant administrative requirements for these funds appear in 40 CFR parts 25, 29, 30, 33 and 35, subparts A and J.

(b) Grants under section 106 may be used to fund a wide range of activities, including but not limited to assessments of water quality, revision of water quality standards (WQS), development of alternative approaches to control pollution, implementation and enforcement of control measures and development or implementation of ground water programs. Grants under section 205(j) may be used to fund water quality management (WQM) planning activities but may not be used to fund implementation of control measures (see part 35, subpart A). Section 205(g) funds are used primarily to manage the wastewater treatment works construction grants program pursuant to the provisions of 40 CFR part 35, subpart J. A State may also use part of the 205(g) funds to administer approved permit programs under sections 402 and 404, to administer a statewide waste treatment management program under section 208(b)(4) and to manage waste treatment construction grants for small communities.

(c) Grant work programs for water quality planning and management shall describe geographic and functional priorities for use of grant funds in a manner which will facilitate EPA review of the grant application and subsequent evaluation of work accomplished with the grant funds. A State's 305(b) Report, WQM plan and other water quality assessments shall identify the State's priority water quality problems and areas. The WQM plan shall contain an analysis of alternative control measures and recommendations to control specific problems. Work programs shall specify the activities to be carried out during the period of the grant; the cost of specific activities; the outputs, for example, permits issued, intensive surveys, wasteload allocations, to be produced by each activity; and where applicable, schedules indicating when activities are to be completed.

(d) State work programs under sections 106, 205(j) and 205(g) shall be coordinated in a manner which indicates the funding from these grants dedicated to major functions, such as permitting, enforcement, monitoring, planning and standards, nonpoint source implementation, management of construction grants, operation and maintenance of treatment works, ground-water, emergency response and program management. States shall also describe how the activities funded by these grants are used in a coordinated manner to address the priority water quality problems identified in the State's water quality assessment under section 305(b).

(e) EPA, States, areawide agencies, interstate agencies, local and Regional governments, and designated management agencies (DMAs) are joint participants in the water pollution control program. States may enter into contractual arrangements or intergovernmental agreements with other agencies concerning the performance of water quality planning and management tasks. Such arrangements shall reflect the capabilities of the respective agencies and shall efficiently utilize available funds and funding eligibilities to meet Federal requirements commensurate with State and local priorities. State work programs under section 205(j) shall be developed jointly with local, Regional and other comprehensive planning organizations.

§ 130.63 Coordination with other programs.

(a) Relationship to the National Pollutant Discharge Elimination System (NPDES) program. In accordance with section 208(e) of the Act, no NPDES permit may be issued which is in conflict with an approved Water Quality Management (WQM) plan. Where a State has assumed responsibility for the administration of the permit program under section 402, it shall assure consistency with the WQM plan.

(b) Relationship to the municipal construction grants program. In accordance with sections 205(j), 216 and 303(e)(3)(H) of the Act, each State shall develop a system for setting priorities for funding construction of municipal wastewater treatment facilities under section 201 of the Act. The State, or the agency to which the State has delegated WQM planning functions, shall review

each facility plan in its area for consistency with the approved WQM plan. Under section 208(d) of the Act, after a waste treatment management agency has been designated and a WQM plan approved, section 201 construction grant funds may be awarded only to those agencies for construction of treatment works in conformity with the approved WQM plan.

(c) Relationship to Federal activities—Each department, agency or instrumentality of the executive, legislative and judicial branches of the Federal Government having jurisdiction over any property or facility or engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants shall comply with all Federal, State, interstate and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner and extent as any non-governmental entity in accordance with section 313 of the CWA.

§ 130.64 Processing application for Indian Tribes.

The Regional Administrator shall process an application of an Indian Tribe submitted under § 130.51(d) in a timely manner. He shall promptly notify the Indian Tribe of receipt of the application.

§ 130.65 Petitions to EPA to undertake actions under section 303(d)

(a) *To whom does this section apply?* As used in this section, ''you'' refers to any person or organization who wants to ask EPA to carry out the actions that States are directed to perform under CWA section 303(d).

(b) *What is the purpose of this section?* (1) This section describes a procedure you should use if you want EPA to carry out the actions that States are directed to perform under CWA section 303(d). Petitioning EPA to undertake activities that States are directed to perform under CWA section 303(d) serves several useful functions. Petitioning EPA to establish TMDLs in the place of a state affords the Agency an opportunity to assemble and analyze the relevant facts, to apply its expertise, exercise the discretion granted to EPA by Congress, and explain the basis for its decision in writing. Petitions will be particularly helpful in instances where the petitioner brings to EPA's attention important facts or analysis the Agency was not aware of or had not conducted on its own.

(2) This petition procedure is intended to be used for requests that EPA intervene to support a State's implementation of CWA section 303(d) based on a substantial failure by the State to establish TMDLs in accordance with the State's schedule. This procedure is not intended to be used to prompt EPA to establish TMDLs for particular waters in cases where you are dissatisfied with the schedule the State has developed for those waters. Rather, if you want a TMDL for a particular waterbody to be established sooner than the State schedule, you should explain to the State why that waterbody warrants earlier attention when the state publishes its section 303(d) list and schedule for public comment.

(c) *What procedures should I follow?* If you want EPA to carry out the actions that States are directed to perform under CWA section 303(d), you should send a petition by certified mail to the EPA Regional Administrator of the Region in which the State is located. See, 40 CFR 1.7.

(d) *What should my petition include?* Your petition should be in writing and it should identify:

(1) The action(s) you want EPA to undertake;

(2) The reasons EPA should perform the action(s);

(3) Any schedule you recommend to EPA for carrying out the desired action(s); and

(4) All information you believe is relevant to your request.

(e) *When will EPA answer my petition?* EPA will answer your petition as quickly as practicable. EPA will notify you and the affected State of its decision in writing.

(f) *How will EPA evaluate my petition?* EPA will consider the information you present in your petition and any other information the Agency obtains from the relevant State regarding its TMDL program. EPA may consider:

(1) The State's schedule for establishing TMDLs;

(2) Progress the State has made in identifying waters needing TMDLs;

(3) Progress the State has made in establishing TMDLs; and

(4) Resources the State has committed for administering its TMDL program.

(g) *What will EPA's decision look like?* EPA may decide to perform any of a variety of actions in response to your petition. For example, EPA could decide to:

(1) Establish TMDLs for a State;

(2) Provide technical or financial assistance;

(3) Work with the State to change its schedule for establishing TMDLs; or

(4) Take other action it determines to be appropriate.

EPA could also decide to deny your petition on the ground that the State is properly implementing section 303(d).

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Part III

Environmental Protection Agency

40 CFR Part 122 et al.

Revisions to the National Pollutant Discharge Elimination System Program and Federal Antidegradation Policy in Support of Revisions to the Water Quality Planning and Management Regulation; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

4O CFR Parts 122, 123, 124, and 131

[OW–FRL–6424–3]

[RIN–2040–AD36]

Revisions to the National Pollutant Discharge Elimination System Program and Federal Antidegradation Policy in Support of Revisions to the Water Quality Planning and Management Regulation

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Today's action revises, clarifies and strengthens the Environmental Protection Agency's (EPA's) National Pollutant Discharge Elimination System (NPDES) Program and Water Quality Standards (WQS) Regulation under the Clean Water Act (CWA). Today's proposed rule is intended to achieve two objectives. The first objective is to achieve reasonable further progress toward attaining water quality standards in impaired waterbodies prior to EPA approval or establishment of a Total Maximum Daily Load (TMDL). To achieve this objective, EPA is proposing explicit language describing the Agency's discretionary authority to object to, and reissue, if necessary, State-issued expired and administratively-continued permits authorizing discharges into impaired waterbodies in the absence of an EPA approved or established TMDL. EPA would exercise this authority to ensure that those permits are consistent with water quality standards. Also to achieve this objective, EPA is proposing to require that selected dischargers offset any increase in mass loadings of a pollutant(s) causing the nonattainment of water quality standards in an amount that would result in reasonable further progress toward attainment of water quality standards.

The second objective is to achieve reasonable assurance that an established TMDL will be implemented. To achieve this objective, EPA is proposing explicit language describing EPA's discretionary authority to object to, and reissue, if necessary, State-issued expired and administratively-continued permits authorizing discharges into impaired waterbodies with established and approved TMDLs. EPA would exercise this authority to ensure that those permits are consistent with applicable wasteload allocations in a TMDL. Also to achieve this objective, EPA is proposing explicit language describing the authority of both EPA and States with approved NPDES programs, to designate certain currently unregulated sources as sources that would require an NPDES permit.

DATES: Comments on this proposal must be received, postmarked or delivered by hand on or before October 22, 1999.

ADDRESSES: Send written comments on the proposed rule to W–99–04, NPDES/WQS, Comment Clerk, Water Docket, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Comments can also be submitted electronically to OW-Docket@epa.gov (see ''DOCKET'' section below). A copy of the supporting documents cited in this proposal is available for review at EPA's Water Docket; 401 M Street, SW, Mail code: EB57, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kim Kramer, Office of Wastewater Management, 401 M St., SW, Washington, DC 20640, Mail Code 4203, e-mail: Kramer.Kim@epa.gov, telephone: (202) 260–9541 for information regarding the NPDES provisions, or Susan Gilbertson, Office of Science and Technology, 401 M St., SW, Washington, DC 20460, Mail Code 4305, e-mail: Gilbertson.Sue@epa.gov, telephone: (202) 260–7301 for information regarding the water quality standards provisions.

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B. Potentially Regulated Entities

Entities discharging pollutants to certain waters of the U.S. could be regulated by this rulemaking if they are subject to National Pollutant Discharge Elimination System (NPDES) program. Potentially regulated entities include:

Category	Examples of potentially regulated entities
State, Territorial or authorized Tribal Governments.	States, territories and authorized Tribes issuing NPDES permits
Federal Government.	EPA
Industry	Industries, including municipal construction sites, discharging pollutants to waters of the U.S.
Municipalities	Owners and operators of publically-owned treatment works, municipal separate storm sewer systems, and municipal construction and industrial activities discharging pollutants to waters of the U.S.

This table is not intended to be exhaustive, but rather provide a guide for readers to identify entities that EPA believes could potentially be affected by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility may be regulated by this proposed action, you should carefully examine the applicability criteria in 40 CFR 122.4, 122.23, 122.24, 122.26, 123.44 and 131.12 of today's proposed rulemaking. If you have any questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section.

C. Docket

The record for this notice has been established under docket number W–99–04 and includes supporting documentation. EPA requests that commenters submit any references cited in their comments. EPA also requests that commenters submitting written comments include an original and 3 copies of their written comments and enclosures. Commenters that want receipt of their comments acknowledged should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

Electronic comments are encouraged and may be submitted to the Water Docket (see **ADDRESSES** section above). Electronic comments must be submitted as an ASCII file or a WordPerfect file. Electronic comments must be identified by the docket number, (W–99–04). Comments and data will also be accepted on disks in WP8 format or ASCII file format. No confidential business information (CBI) should be sent via e-mail.

For access to docket materials, call EPA's Water Docket at (202) 260–3027 between 9:00 a.m. and 3:30 p.m. for an appointment. An electronic version of this proposal will be available via the Internet at: http://www.epa.gov.

I. Purposes and Objectives of Today's Proposed Rules

Today's proposed rule is intended to clarify and strengthen EPA's NPDES and WQS regulations governing discharges into waterbodies that are not attaining water quality standards. Today, EPA is separately proposing revisions to its Total Maximum Daily Load regulations so that TMDLs can more effectively contribute to improving the nation's water quality. Today's proposal complements that effort by ensuring that two objectives are met. The first objective applies in impaired waterbodies prior to the establishment of a TMDL. The purpose of this objective is to achieve reasonable further progress toward attaining water quality standards. The second objective applies in impaired waterbodies after the establishment of a TMDL. The purpose of this objective is to ensure more effective implementation of TMDLs.

To meet the reasonable further progress objective, EPA is adding a new antidegradation requirement and revising the NPDES permitting regulations to implement that requirement. Today's proposal would require all large new dischargers and existing dischargers undergoing a significant expansion proposing to discharge the pollutant(s) of concern into an impaired waterbody, to offset that new or increased discharge. This requirement is in addition to otherwise applicable requirements of the CWA and will ensure that there will be reasonable further progress toward attaining water quality standards despite the addition of the new load from those dischargers. Today's

proposal also establishes a number of requirements, under the NPDES program, to ensure compliance with the antidegradation offset requirement. Those requirements include boundaries on when and where pollutant load reductions would need to be obtained. Therefore, today's proposal will result in reasonable further progress toward attainment of water quality standards. In some cases, such progress may even result in the attainment of water quality standards so that a TMDL is no longer required.

The Agency notes that this requirement is in addition to existing requirements found at 40 CFR 122.44(d)(1)(vii) and 122.4(i). Section 122.44(d) requires dischargers, where necessary, to receive limits that derive from and comply with water quality standards. Section 122.4(i) requires that no permit be issued to a new source or a new discharger if the discharge will cause or contribute to a violation of water quality standards.

Today, EPA is also proposing to explicitly describe a Regional Administrator's authority to trigger existing provisions for reviewing and objecting to State-issued NPDES permits. Under the proposal, the Regional Administrator will have the discretion, under certain circumstances, to trigger these review and objection procedures when a State fails to reissue an expired, State-issued permit that has been administratively continued for more than 90 days. This proposal is designed to address lengthy administrative continuance of permits that authorize discharges into impaired waterbodies and which contain limits that are insufficient to protect applicable water quality standards. By not reissuing these permits, there is a delay in the implementation of needed water quality-based effluent limitations. This provision will serve both purposes of today's proposal. Prior to the establishment of a TMDL, the provision can be used to ensure that more stringent effluent limitations which derive from and comply with water quality standards are implemented. Subsequent to the establishment of a TMDL, this provision will enable the Regional Administrator to ensure that existing dischargers receive permit limits consistent with wasteload allocations in a TMDL.

EPA is today proposing additional revisions to the permitting regulations to ensure that TMDLs are implemented. These revisions include changes to the NPDES jurisdictional regulations regarding designation of point sources for regulation under the NPDES permitting program. EPA is proposing explicit language describing its authority, in States with approved NPDES programs, to designate animal feeding operations (AFOs) and aquatic animal production facilities (AAPFs) as sources subject to NPDES requirements on a case-by-case basis. EPA is also proposing to eliminate the current regulatory exclusion for certain discharges from silvicultural activities. These discharges may also become subject to NPDES requirements on a case-by-case basis. EPA is constraining its discretion to exercise the authority to subject these sources to the NPDES program to those circumstances when EPA establishes a TMDL for a waterbody and determines that designation is necessary to ensure that the wasteload allocations and load allocations under the TMDL are achieved. The proposed rule does not place any constraint on the discretion of State program Directors, in NPDES delegated States, to designate silvicultural activities as point sources. EPA recommends however, that States use this authority only on a limited basis, in circumstances similar to those in which EPA intends to use it (i.e., when there is no other means of providing reasonable assurance that a load allocation or wasteload allocation in a TMDL will be met).

Each of today's proposed revisions is designed to achieve the water quality goals of the Clean Water Act. EPA believes that today's proposal will ensure that those goals are met more quickly and that one of the most important tools for achieving those goals, a TMDL, will be implemented more effectively.

II. Proposed Requirements for New and Significantly Expanding Dischargers Located on Impaired Waters

A. Who Would Be Subject to This Proposal?

EPA is today proposing to establish new requirements for dischargers proposing to add new pollutant loads to an impaired waterbody in the absence of a TMDL. These new requirements are located in 40 CFR 122.4(j) and 131.12(a)(1)(ii). Section 122.4(j) applies to all new dischargers and existing dischargers undergoing a significant expansion proposing to add new pollutant loads to a waterbody. Section 131.12(a)(1)(ii) applies to large new and significantly expanding dischargers proposing to add new pollutant loads to an impaired waterbody for which EPA has not approved or established a TMDL. EPA is also proposing to modify the definitions of a new discharger and an existing source under 40 CFR 122.2 and 122.29.

EPA intends these new requirements to apply only to those dischargers who are proposing to add new loads of pollutants to a waterbody. Because the current definition of a new discharger can be read to include some dischargers who are not adding new loads to a waterbody, EPA is proposing to modify the existing definitions of both a new discharger and an existing source. The definition of a new discharger is currently found at 40 CFR 122.2 and the definition of an existing source is currently found at 40 CFR 122.29. EPA is also proposing to define the term ''significant expansion.'' All of these definitions will be moved to 40 CFR 122.2.

A new discharger, as currently defined in 40 CFR 122.2, means any building, structure, facility, or installation from which there is a discharge of pollutants which commenced after August 13, 1979; which is not a new source; and has never received a finally effective NPDES permit. An existing source, as defined in 40 CFR 122.29, is any source which is not a new source or a new discharger. The plain reading of the current definition of a new discharger would subject certain sources to today's proposed sections (122.4(j) and 131.12(a)(1)(ii), including the proposed offset requirements explained below). Under the current definition, these sources would be subject to today's proposal even though they would not propose to discharge new pollutant loads to a waterbody. Such sources include sources that have been and currently are discharging pollutants that are not now subject to the NPDES program but may in the future become subject to the NPDES program. These sources would be subject to the requirements of the NPDES program once designated.

Designation of sources can be made on a case-by-case basis involving an individual source. For example, an individual medium-sized animal feeding operation (AFO) may be designated as a medium-sized concentrated animal feeding operation (CAFO).[1] Designation can also be made

[1] An example of a source that may be designated as a point source on an individual basis and which at the time of designation, would fall within the current definition of a new discharger, is a medium-sized animal feeding operation (AFO) designated as a medium-sized concentrated animal feeding operation (CAFO). This would be the case where that AFO started discharging pollutants after August 13, 1979. This source is not a new source (there is no applicable NSPS yet) and this source has never received a finally effective NPDES permit. As an AFO, the source is not subject to the NPDES

by category. For example, sources that will become subject to the NPDES program under the Storm Water Phase II rule will be designated on a categorical basis.[2] Although these sources have been discharging before and at the time of designation, they would fall within the current definition of a new discharger. As a result, unless EPA amends the definitions of a new discharger and an existing source for this purpose, these sources would be subject to the proposed requirements of 40 CFR122.4(j) and 131.12(a)(1)(ii). As mentioned above, EPA intends these sections to apply only to sources proposing to discharge new pollutant loads to a waterbody.

1. Which Sources Discharge New Pollutant Loads to a Waterbody?

Sources that are proposing to discharge new pollutant loads to a waterbody are dischargers that have not yet begun discharging but are proposing to discharge. Also discharging new pollutant loads are those dischargers that have been discharging to one waterbody and, for example, propose to move their outfall to another location not within the ''same body of water.'' Existing dischargers that expand or increase their loads, discharge new pollutant loads to a waterbody as well.

For proposed 40 CFR122.4(j) and 131.12(a)(1)(ii) to apply only to dischargers that propose to discharge new pollutant loads to a waterbody, EPA is proposing to modify the definition of a new discharger. In addition, EPA is proposing to delete the current definition of an existing source at 40 CFR 122.29 and replace it with a new term, ''existing discharger,'' which will be defined in 40 CFR 122.2. EPA believes that consolidating these definitions into one section provides greater clarity. The proposed modifications would result in dischargers that fall into two classes, those that are currently discharging to the same body of water (or existing dischargers) and those that are not now discharging but wish to discharge in the future (or new dischargers). For purposes of 40 CFR 122.4(j) and 131.12(a)(1)(ii), however, although dischargers would be classified as either ''new dischargers'' or ''existing dischargers,'' a new discharger may also be a new source and an existing discharger may also be a new source.[3]

2. Would Dischargers Who Are Currently Discharging but Move Their Outfall(s) to Another Waterbody Be Subject to This Proposal?

Some dischargers move their outfalls from one waterbody to another waterbody. In order to protect impaired waterbodies, EPA believes it is appropriate to subject these dischargers to the new requirements reflected in today's proposal. This is consistent with the Agency's intent to subject sources introducing new pollutant loads to a waterbody to today's new requirements. An outfall would not be subject to today's new requirements if it was moved within the ''same body of water'' as the existing outfall location. In determining whether the outfall is moved within the ''same body of water'' as its original location, the permitting authority should consider whether: (1) The background concentration of the pollutant in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar at and between both outfall points; (2) there is a direct hydrological connection between outfall points; and (3) water quality characteristics (e.g., temperature, Ph, hardness) are similar at and between both outfall points. Dischargers who move an outfall(s) within the same body of water would remain existing dischargers.

The proposed modifications to the definitions of a new discharger and an existing source will capture these sources as sources that would be subject to proposed 40 CFR 122.4(j) and 131.12(a)(1)(ii).

3. Will the Proposed Changes to the Definitions of a New Discharger and an Existing Source Affect Their Application Elsewhere in the Regulations?

In modifying the definition of a new discharger, deleting the definition of an existing source and proposing a definition for a new term, an existing discharger, EPA does not intend to affect any other existing regulations or effluent guidelines, including EPA's permit decisionmaking regulations. Under 40 CFR 124.16 and 124.60 of EPA's permit decisionmaking procedures, a ''new discharger,'' whose permit is the subject of a pending administrative appeal, is without a permit until the appeal process has concluded and the Agency's action has become final. On the other hand, an existing facility, whose permit is the subject of a pending administrative appeal, is not without a permit until the appeal process has concluded. The uncontested terms of an existing facility's permit take effect pending the conclusion of an administrative appeal. Although today's proposal would change the definitions of a new discharger and an existing source, EPA does not intend to change the application of 40 CFR 124.16 or 124.60 at this time. Accordingly, a discharger who, under the existing definitions, is a ''new discharger'' and who, under the definitions in today's proposal, would be an ''existing discharger,'' would be treated as a ''new discharger'' for purposes of 40 CFR 124.16 and 124.60. That is, a discharger who would become an ''existing discharger'' by virtue of the changes in today's proposal, would still be without a permit pending the conclusion of an administrative appeal of the discharger's permit. EPA believes that this interpretation of 40 CFR 124.16 and 124.60 makes sense because dischargers who become ''existing dischargers'' by virtue of the changed definitions proposed today would not have been operating under an existing permit (this class of dischargers are those that are discharging and not subject to NPDES regulation (discharging legally without a permit) but are designated as sources subject to NPDES regulation at some point in the future). EPA has long required that those who wish to contest permit terms do so on their own time. 43 FR 37,087 (Aug. 21, 1978). This principle is especially compelling when the Agency has never acted to approve the discharge on any set of terms or conditions.

EPA believes that an amendment to 40 CFR part 124 would clarify how EPA intends the stay provisions in 40 CFR 124.16 and 124.60 to apply to ''existing dischargers''; however, EPA has not included revised language in today's proposal because the Agency has,

permit program because AFOs are exempt from permit requirements under 40 CFR 122.3(e). However, if that source is designated as a CAFO (under 40 CFR 122.23) at any time in the future, it would fall within the current definition of a new discharger.

[2] An example of a source which may become subject to the NPDES program as a result of a categorical designation of point sources and which would fall within the current definition of a new discharger is any Storm Water Phase II source that currently is and has been discharging pollutants at any point after August 13, 1979. These sources are not new sources (there is no applicable NSPS) and these sources have never received a finally effective NPDES permit.

[3] The definition of a new source remains unchanged. A new source is a source which began construction after the promulgation of applicable new source performance standards (NSPS). Under this unchanged definition of a new source, existing dischargers and new dischargers (under this proposal) can be new sources subject to NSPS. For example, if a discharger is a new discharger under this proposal and that discharger began construction after the promulgation of applicable NSPS, then that discharger would also be a new source (subject to NSPS). Likewise, if a discharger is an existing discharger under this proposal and that discharger began construction after the promulgation of applicable NSPS, then that discharger would also be a new source (subject to NSPS). If there are no applicable NSPS for either discharger, then neither would be a new source.

elsewhere, proposed changes to 40 CFR 124.16 and 124.60 which have not yet been finalized. 61 FR 65,268 (Dec. 11, 1996)(Amendment to Streamline the National Pollutant Discharge Elimination System Program Regulations: Round 2). EPA proposes to amend 40 CFR 124.16 and 124.60 in a way that more clearly reflects its understanding of their applicability to ''existing dischargers'' and which will conform to the revisions made to these provisions in the Round 2 NPDES Streamlining Rule once the contours of those revisions have become final. EPA solicits comment on whether or not a new discharger that would become an existing discharger under the definitions in today's proposal should be treated as an existing discharger for purposes of 40 CFR 124.16 and 124.60.

EPA also invites comment on whether the modifications to these definitions will have an effect on their application elsewhere in the NPDES regulations. EPA may amend the respective sections so that these definitional changes do not affect those sections.

4. Would Any Existing Dischargers Be Subject to This Proposal?

EPA has consistently believed that the mere fact that an existing discharger currently discharges does not give them the privilege to discharge any amount of additional loads without consequence. Therefore, EPA is also proposing to subject existing dischargers undergoing a significant expansion to proposed 40 CFR 122.4(j) and 131.12(a)(1)(ii). The term ''significant expansion'' will be newly defined in 40 CFR 122.2.

5. How Is EPA Proposing To Define What Constitutes a ''Significant Expansion'' of an Existing Discharger?

EPA is proposing to define the term ''significant expansion'' to mean a twenty percent or greater increase in loadings above the discharger's current permit limit. Twenty percent is consistent with EPA's ''Guidance Manual for the Use of Production-Based Pretreatment Standards and the Combined Wastestream Formula,'' September 19, 1985. There, the Agency stated that an industrial user (IU) is required to notify the Control Authority immediately where the IU's average production and flow rate data have ''significantly'' changed. The guidance further explains that as a general rule, the average rate is considered to have changed significantly if the change is greater than twenty percent. Where there is a significant change in these rates, it is suggested that the Control Authority reevaluate the limits in the IU's permit. In the preamble to the revision to the General Pretreatment Regulations for Existing and New sources, FR 40562, 40565, October 17, 1988, EPA confirmed the use of twenty percent as the level at which an average rate is considered to have changed significantly. The Agency stated that ''for purposes of today's rule, any increase or decrease in production (or flow) rates will generally be deemed significant if the change is equal to or greater than twenty percent of the long term average production (or flow) rate at the facility.'' Therefore, in order to maintain consistency with its current guidance, EPA is proposing a twenty percent increase in loadings above the discharger's current permit limit as the threshold level which defines a significant expansion.

The Agency believes however, that using an increase in ''loadings'' rather than ''production or flow rates'' is more appropriate. Today's proposal is applicable to dischargers proposing to discharge new pollutant loads into a waterbody and there may be cases where an increase in production rates may not result in a corresponding increase in pollutant loads. EPA invites comment on the appropriateness of a twenty percent increase in loadings above the discharger's current permit limit as the threshold level which defines a significant expansion.

EPA is also considering the use of a fifty rather than a twenty percent increase in loadings above the discharger's current permit limit as the threshold level to define a ''significant expansion.'' A threshold level of fifty percent is consistent with other Agency guidance. On December 18, 1984, EPA put out guidance on the ''Calculation of Production-Based Effluent Limits'' (Memorandum from J. William Jordan to Regional Branch Chiefs). The purpose of the guidance was to clarify the procedure for calculating production-based effluent limitations and to provide guidance on the use of alternate limitations.

Effluent limitations guidelines are often derived from production rates and are set at levels which include some variations in production. However, certain facilities may have large random or cyclic fluctuations in production rates where it would be appropriate to have alternative effluent limitations which are applicable at some increased production rate. The guidance mentioned above suggests that if production rates are expected to change ''significantly'' during the life of the permit, the permit should include alternate limits. The guidance identifies that it is generally agreed that a ten to twenty percent fluctuation in production is within the range of normal variability and thus, would not need alternate limits. Further, it states that changes in production rates which are substantially higher, ''such as fifty percent,'' would warrant the consideration of alternate limits. EPA seeks comment on whether a fifty percent increase in loadings above the discharger's current permit limits should be used to define a significant expansion.

Other statutes and regulations also establish thresholds over which a source cannot change without incurring different requirements. The Resource Conservation and Recovery Act (RCRA) permit regulations hold that ''reconstruction'' occurs when capital investment in the changes to the facility exceed fifty percent of the capital cost of a comparable entirely new hazardous waste management facility. 40 CFR 270.72(b). An interim status facility (a facility that is in existence on the effective date of statutory or regulatory amendments that render the facility subject to the requirement to have a RCRA permit), is treated as having been issued a permit and may make changes short of reconstruction, but cannot make changes amounting to reconstruction until the facility receives a permit.

Under the Clean Air Act, new source review applies to new major sources and modifications to existing major sources. 42 U.S.C. 7411. A modification of an existing major source triggers review if it is a physical or operational change that increases emissions by a ''significant'' amount. By regulation, EPA has defined ''significant'' based on the pollutant emitted. 40 CFR 51.165.

EPA invites comment on whether a threshold level other than twenty or fifty percent should trigger the applicability of 40 CFR 122.4(j) and 131.12(a)(1)(ii). One option would be to allow the permitting authority to determine what constitutes a significant expansion on a case-by-case basis, without establishing a specific threshold level.

The Agency notes that where an existing discharger undergoes a ''significant expansion,'' only the expanded portion of the discharge (the new loadings) would be subject to the offset requirements under 40 CFR 131.12(a)(1)(ii). For existing dischargers with a current permitted load, the definition of a significant expansion and the amount for which offsets are required would be based on the increase in the permitted load.

Based on an initial analysis of potentially affected sources, EPA believes that the cost to dischargers of using a threshold of twenty percent to

define a significant expansion would not be significantly greater than the cost of using a threshold of 50 percent. EPA requests comment on this initial conclusion and any supporting data commenters can provide.

EPA also invites comment on how to measure a significant expansion and to calculate the corresponding offset requirements for those dischargers who increase the loadings of a pollutant for which the waterbody is impaired but for which there is no current permitted load (there is no effluent limit for that particular pollutant in the discharger's permit). It is EPA's intent that the offset requirements apply to new pollutant loads and in the case of an existing discharger, ''significant'' new pollutant loads.

B. What Are the Proposed Changes to the Federal Antidegradation Policy?

EPA is proposing to amend 40 CFR 131.12(a) to require a new discharger, or an existing discharger undergoing a significant expansion, proposing to discharge to a waterbody not attaining water quality standards, the pollutant(s) causing the nonattainment, to achieve reasonable further progress toward attaining water quality standards. This requirement, in addition to otherwise applicable requirements of the CWA, would apply where there is no EPA approved or established Total Maximum Daily Load (TMDL). When EPA has approved or established a TMDL, a new discharger proposing to discharge the pollutant(s) for which the TMDL was established, may discharge only in accordance with that TMDL or a revised, approved TMDL. It would apply only to new dischargers and existing dischargers undergoing a significant expansion that are not a small business or entity as defined in 5 U.S.C. 601(6). Therefore, a new discharger or existing discharger undergoing a significant expansion which is not a small business or entity, would need to comply with a permit limit that derives from and complies with water quality standards and this new requirement for reasonable further progress. With this proposed change, EPA intends to ensure reasonable further progress toward restoring water quality standards in impaired waters prior to the completion of TMDLs. EPA emphasizes that this is an interim approach to attaining water quality standards; these requirements apply only until the TMDL is approved or established by EPA, and the TMDL is implemented with respect to the discharger subject to these requirements.

1. What Is the Current Federal Antidegradation Policy?

Section 303(c) of the CWA establishes the basis for federal water quality standards. EPA regulations implementing section 303(c) are published at 40 CFR part 131. Under these rules, the minimum elements that must be included in a State's water quality standards include: use designations for all waterbodies in the State, water quality criteria sufficient to protect those use designations, and an antidegradation policy. See 40 CFR 131.6. States may also include in their standards, policies generally affecting the standards' application and implementation. See 40 CFR 131.13. These policies are subject to EPA review and approval.

The current federal antidegradation policy performs an essential function in protecting and maintaining water quality. Designated uses establish the water quality goals for the waterbody, water quality criteria define the minimum conditions necessary to achieve those goals and the antidegradation policy specifies the framework to be used in making decisions regarding changes in water quality. The intent of an antidegradation policy is to ensure that in all cases, at a minimum: (1) Water quality necessary to support existing uses is maintained (Tier 1); (2) that where water quality is better than the minimum level necessary to support protection and propagation of fish, shellfish and wildlife, and recreation in and on the water (''fishable/swimmable''), that water quality is also maintained and protected unless, through a public process, some lowering of water quality is deemed to be necessary to allow important economic or social development to occur (Tier 2); and (3) where waterbodies are of exceptional recreational or ecological significance, water quality is maintained and protected (Tier 3). Antidegradation plays a critical role in allowing States and Tribes to maintain and protect the finite public resource of clean water and ensure that decisions to allow reductions in water quality are made in a public manner and serve the public good. States and authorized Tribes are required to adopt antidegradation policies at least as stringent as the federal antidegradation policy.

Section 131.12(a) of the antidegradation policy, contained in the federal water quality standards regulation, requires that existing uses and the water quality necessary to protect them be maintained and protected. This provision, in effect, establishes the floor of water quality for all waters of the U.S., and that all waters of the U.S. are subject to Tier 1 protection. In general, waters that are subject only to Tier 1 antidegradation policies are those waterbodies that do not exceed the CWA section 101(a) goals. These waters either do not have any remaining assimilative capacity to receive additional loads of pollutants without causing the loss of the existing use or the water quality already is degraded below that necessary to maintain an existing use. ''Existing uses'' are defined at 40 CFR 131.3(c) as those uses actually attained in the waterbody on or after November 28, 1975, whether or not they are included in the water quality standards. Antidegradation policies are generally implemented for Tier 1 by reviewing and determining whether a discharge would impair an existing use. Tier 1 currently requires that water quality necessary to protect existing uses shall be maintained and protected. In addition, the State or Tribe should ensure that all existing uses are designated in accordance with 40 CFR 131.10(i).

2. What Were the Recommendations of the TMDL Federal Advisory Committee?

The Federal Advisory Committee on the Total Maximum Daily Load Program recommended a number of ways to improve the effectiveness and efficiency of EPA, State, Territorial and Tribal programs under section 303(d) of the CWA. These recommendations address many of the TMDL program's complex technical and policy issues, and include recommendations on several new policy and program directions. In particular, the Committee recognized that there could be a considerable time lag between the initial listing of a waterbody on a section 303(d) list of impaired or threatened waters and the actual completion, approval and implementation of the TMDL. Some on the Committee noted that water quality should not be allowed to further degrade during that time period. The Committee recommended that EPA actively encourage and support stakeholders stabilizing and enhancing water quality before a TMDL is in place (Committee Report at page 17). The Committee noted that the most successful stakeholder efforts would lead to the full restoration of water quality and attainment of water quality standards and ultimately the water's removal from the section 303(d) list before a TMDL is developed. The Committee recommended an optional stabilization plan that would identify mechanisms that might allow for

exceptions from point source discharge restrictions upon demonstration that the optional stabilization plan results in parameter specific net progress in water quality through means other than those restrictions.

EPA believes that further degradation of already impaired waterbodies must be prevented and also recognizes the need for progress toward attaining water quality standards in this interim period. Therefore, EPA believes that by creating a new requirement under the federal antidegradation policy as reflected in today's proposal, not only will further degradation of water quality be prevented, but reasonable further progress towards restoring water quality standards will be achieved.

3. What Revisions Is EPA Proposing Today?

i. Why Is EPA Proposing to Require Dischargers Subject to This Proposal to Achieve Reasonable Further Progress Toward Attaining Water Quality Standards?

Water quality standards serve as the foundation for the water-quality based approach to pollution control and are a fundamental component of watershed protection. Under the Clean Water Act, States, Territories and authorized Tribes adopt water quality standards to protect public health or welfare, enhance the quality of the nation's water and serve the purposes of the Act. A primary objective of the Act is to ''restore and maintain the chemical, physical and biological integrity of the Nation's waters.'' CWA section 101(a). To date, EPA's implementing regulations at 40 CFR 131 have addressed the mandate for restoring the nation's waters through the specification of designated uses. Designated uses are defined as those uses specified for each waterbody or segment, whether or not those uses are being attained. Designated uses focus on the attainable condition of the waterbody, in contrast to existing uses which focus on the past or present condition of the waterbody. It is through the designation of uses that the environmental goals for specific waterbodies are established. States, Territories and authorized Tribes have the flexibility to establish goals for waters that require improvements in water quality, thus establishing a requirement for restoration. Today's proposal supplements the restoration provisions of the current regulations. By establishing the requirement for reasonable further progress as a component of the federal antidegradation policy, EPA believes the objectives of the Act will be advanced.

Prior to today's proposal, Tier 1 of the federal antidegradation policy has been aimed at protecting and maintaining existing uses of waterbodies. EPA believes extending the protection of existing uses to include a provision aimed at promoting reasonable further progress toward restoring water quality in impaired waterbodies is both consistent with the goals of the Act, and is a logical means for meeting those goals.

The Agency's policy choice is supported by the Act's legislative history. The Senate Report states:

> In those waterbodies which are not pristine, it should be the national policy to take those steps which will result in change toward the pristine state in which the physical, chemical and biological integrity of the waterbody can be said to exist. Striving toward, and maintaining the pristine state is an objective which minimizes the burden to man in maintaining a healthy environment, and which will provide for a stable biosphere that is essential to the well-being of human society. S. Rep. No. 92–414, 92d Cong. 1st. Sess. at 76–77 (1971).

Establishing a requirement for reasonable further progress will result in improvements in water quality and progress toward attaining water quality standards, pending the establishment, approval and implementation of the TMDL.

Today, EPA is proposing to require large new and significantly expanding dischargers proposing to discharge to nonattained waterbodies to achieve reasonable further progress toward attaining water quality standards before discharging additional loadings of the pollutant causing the nonattainment. In effect, certain dischargers will be required to show net progress toward improving water quality as a condition of being authorized to discharge to a nonattained waterbody. EPA believes this proposal is consistent with the recommendations of the Federal Advisory Committee on the Total Maximum Daily Load Program, and the approach chosen by the Agency when faced with the need to address a similar problem under the Clean Air Act.

a. How Does This Relate to the TMDL Federal Advisory Committee's Recommendations?

As noted above, the Committee recommended that EPA actively encourage and support stakeholders stabilizing and enhancing water quality before a TMDL is in place. While EPA is not adopting all of the Committee's recommendations, the Agency believes that progress toward the section 101(a) goals of the Act should occur before allowing some new and significantly expanding dischargers to add new loads of the pollutant causing the nonattainment to an impaired waterbody.

b. Has This Approach Been Used in Other Statutes?

Just as the Clean Water Act establishes the goal to ''* * * restore and maintain the chemical, physical and biological integrity of the Nation's waters,'' the Clean Air Act declares its purpose is ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.'' CAA section101(b)(1). Given these similar goals, the actions and reasoning of the Agency and Congress in dealing with areas which are not meeting air quality standards can serve to guide EPA's policy choices when dealing with waterbodies which are not attaining water quality standards.

In 1970, the Clean Air Act required generally, that State programs had to ensure that new sources did not interfere with the attainment of national ambient air quality standards (NAAQS). In 1976, EPA issued an interpretive ruling on the preconstruction review requirements for major new stationary sources proposing to locate in an area that exceeded a NAAQS. Given a standard and an area not in attainment with a standard, the Agency believed that it was reasonable to allow a new addition of the pollutant causing the nonattainment only if the new source ensured that reasonable progress was made toward meeting that standard. 41 FR 55524. Congress agreed that EPA's requirement was reasonable. As a result, Congress clarified in the Clean Air Act Amendments of 1977 that, in general, a new permit to construct and operate a new major stationary source or a major modification to an existing source proposing to emit the pollutant of concern in a nonattainment area may only be issued if reasonable further progress toward attainment of the NAAQS was made and the source met the most stringent emissions limits. CAA section 173.

Given the similar statutory goals and the similar circumstances, EPA again believes it would be reasonable to require new and significantly expanding existing dischargers proposing to discharge additional loads of the pollutant(s) causing the nonattainment of water quality standards to ensure that progress is made toward attainment of the standards in the future. EPA believes that establishing a similar requirement for reasonable further progress as a component of the federal antidegradation policy is the best way to meet the goals of the Clean Water Act

when faced with new and significantly expanding existing dischargers wishing to locate on impaired waterbodies.

EPA invites comments on this proposed change to Tier 1 of the federal antidegradation policy. EPA also invites comment on whether some other approach could serve as an appropriate means to ensure reasonable further progress toward restoring water quality standards in the interim period between listing of waterbodies under CWA section 303(d), and the establishment, approval and implementation of the TMDL.

ii. How is EPA Proposing to Define Reasonable Further Progress?

As stated above, EPA is proposing to require reasonable further progress as a means of achieving the objectives of the Clean Water Act. EPA is also today proposing a definition of reasonable further progress for some new and existing dischargers. EPA believes reasonable further progress is best achieved by offsetting any new loading of the pollutant of concern to an impaired waterbody by reducing loads of the same pollutant from existing sources located on the same waterbody. EPA further believes that an offset of at least one and a half to one is generally appropriate as means of ensuring reasonable further progress. Offsets are not only the most feasible means to achieve reasonable further progress for new and significantly expanding dischargers, they are a logical means to actually achieve such progress. Further, they are a means the Agency has chosen in similar circumstances.

EPA is thus proposing that, in general, pollutant load reductions must be one and a half times the new loads of the pollutant to the waterbody (see discussion below). Under such a requirement, reasonable further progress toward meeting the applicable water quality standard would be achieved because the total load of the pollutant to the waterbody is reduced. An added benefit of requiring offsets as the means for achieving reasonable further progress is that the requirement creates an incentive for pollution prevention. A discharger subject to the requirement can reduce the burden of finding sufficient offsets by reducing the amount of pollutant(s) the discharger is proposing to add to the impaired waterbody.

EPA also believes that this proposed requirement will serve as a catalyst for the establishment of a trading market between large new dischargers and existing dischargers undergoing a significant expansion, and existing point source dischargers or nonpoint sources. (See discussion below). EPA believes that the establishment of a trading market will give dischargers more options to achieve any future permit limits required by TMDLs more efficiently.

a. Has Reasonable Further Progress Been Defined Under Other Statutes?

In 1977, Congress amended the Clean Air Act and adopted the general requirements for a new permit to construct and operate a new major stationary source or a major modification to an existing source proposing to emit the pollutant of concern in a nonattainment area. Such permits may be issued if, by the time the source begins operating, sufficient offsetting emissions reductions have been attained such that the total emissions in the area will be sufficiently less than the emissions from existing sources prior to the application for a new permit so as to represent reasonable further progress. CAA section 173. The term ''reasonable further progress'' was defined as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may be reasonably required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standards by the applicable date.'' CAA section 171(1). Congress adopted this new provision ''to allow reasonable economic growth to continue in an area while making reasonable further progress to assure attainment of the standards by a fixed date. * * *'' 95 Cong. House Report 294 at *211.

EPA believes that the Agency's experiences under the Clean Air Act serve as a useful guide for its policy choices with respect to treatment of new loads of pollutants to impaired waterbodies under the Clean Water Act. EPA's proposals today are, therefore, similarly designed to allow continued growth in areas which are not meeting water quality standards while ensuring that progress toward meeting water quality standards is not halted or reversed.

iii. What Offsets Would Affected Dischargers Need to Obtain to Ensure Reasonable Further Progress?

EPA is proposing to require that large new and significantly expanding dischargers obtain and maintain offsets, i.e., pollutant load reductions, in general, in the amount of one and a half to one. In other words, these dischargers would need to obtain and maintain an offset of least of one and a half times the amount of the new or additional pollutant loadings they are proposing to discharge. The specific requirements for an individual discharger would be dependent upon the type of pollutant for which the waterbody is impaired (which is also the pollutant the discharger is proposing to discharge), the source from which the discharger is proposing to obtain and maintain the offsetting load reductions, and the large new or significantly expanding discharger itself. In addition, EPA is proposing specific permitting requirements to implement this offset requirement. (See discussion below).

In considering the amount by which a proposed discharge should be offset, EPA considered the burdens associated with achieving the necessary pollutant load reductions. Based upon the Agency's analysis of the costs, discussed below in section VI. A, EPA believes that in most cases an offset in the amount of one and a half times the proposed discharge is both reasonable and achievable.

a. Could Offsets Be Obtained From Existing Nonpoint Sources?

EPA believes further that this proposed requirement will result in load reductions from sources that EPA and States authorized to administer the NPDES program can not regulate under the NPDES program. Under today's proposal, large new or significantly expanding dischargers would need to obtain and maintain pollutant load reductions to compensate for their proposed increases in pollutant loads. These reductions would need to be obtained from existing point source discharger(s) or nonpoint sources located on the same waterbody as the discharge from the new discharger or existing discharger undergoing a significant expansion. EPA believes the ability to obtain offsets from nonpoint sources, in addition to point source dischargers, is a crucial element in ensuring reasonable further progress toward restoring water quality pending the completion of a TMDL. Nonpoint sources, in some areas, are significant contributors of pollutants to waters of the United States, and high pollutant levels persist in many waterbodies. Furthermore, in many cases it is more cost effective to obtain significant reductions from non-point sources than to impose more stringent limitations on point sources.

b. Could the Director Vary the Amount of the Offset?

Today's proposal generally requires that the amount of the proposed discharge be offset by pollutant load reductions of one and a half times the increase in mass loadings. The amount of the offset however, could be varied, at the discretion of the Director. The Director may determine that an offset greater than one and a half times the proposed discharge is necessary in order

to ensure reasonable further progress toward restoring water quality standards. The Director may also determine that an offset less than one and a half times, but at least more than, the amount of the proposed discharge will ensure reasonable further progress. Each of these cases is discussed below.

EPA recognizes the potential for a significant amount of uncertainty in both obtaining and maintaining the pollutant load reductions, depending on the source of the reductions. For example, if the discharger enters into an agreement with an existing point source, the discharger would be presumed to have an offset requirement of one and a half times the amount of the proposed discharge. However, when entering into an agreement with a nonpoint source, it may be somewhat more difficult to determine exactly how much reduction will be achieved and whether the reductions would be maintained over time, due to the uncertainties regarding the effects of management practices designed to reduce loads from nonpoint sources. In addition, since nonpoint sources are not subject to an NPDES permit, the permitting authority may have less ability to ensure that offsets are implemented and maintained. EPA notes however that many States have additional authorities beyond those specified in the CWA, to implement load reductions from nonpoint sources.

The location of the offsetting source(s) within the impaired waterbody may also impact the potential for achieving reasonable further progress in attaining water quality standards. If the source(s) of the offsetting pollutant load reductions are located at the margins of the impaired waterbody, the overall impact of the pollutant load reductions in terms of attaining water quality standards is more difficult to determine. In such cases, the Director may require that a greater amount of reductions must be realized and require an offset greater than one and a half to one. Specifically, the final offset may be determined by factors such as how great a pollutant load reduction the offsetting source(s) would actually be able to realize; the likelihood that the offsetting source(s) will be able to maintain the offset; and the location of the offsetting source(s) within the impaired waterbody.

EPA believes allowing the Director the discretion to require an offset greater than one and a half times the amount the discharger is proposing to discharge is appropriate in order to compensate for uncertainties associated with obtaining load reductions from offsetting sources. EPA also believes this discretion is appropriate to account for other factors which may include the type of pollutant and the degree of impairment of the waterbody.

EPA also recognizes that situations may exist where offsets of one and a half times the proposed discharge are difficult to obtain, such that an offset of less than one and a half to one (but greater than one to one) may satisfy the requirement for reasonable further progress. For example, there may only be a few other sources of the pollutant causing the impairment, the other sources may discharge a very limited amount of the pollutant, or it may be very costly to control the discharge. While EPA believes these situations are limited in number, allowing the Director the discretion to require an offset less than one and a half times the proposed discharge but at least more than the amount of the proposed discharge will still ensure reasonable further progress toward restoring water quality standards in the interim.

To assure appropriate implementation of the offset provisions by authorized State permitting authorities, EPA would implement its oversight role though the permit objection provisions of CWA section 402(d) (The Agency proposes changes to the permit objection regulations elsewhere in today's notice. Those changes involve EPA's authority to object to expired and administratively-continued permits). Under CWA section 402(d), EPA may object to the issuance of an NPDES permit by an authorized State if the permit would be outside the guidelines and requirements of the Act. If the issuance of a State NPDES permit to a source required to obtain an offset would not result in reasonable further progress toward attainment of water quality standards, EPA could object to such a permit.

EPA envisions two instances when an objection might be warranted: specifically, when the State Director would propose to issue a permit with an offset less than 1.5 and, as discussed further on in today's notice, when the State Director would waive the offset provision concluding that the offset would result in further degradation of water quality. The 1.5 offset criterion is not absolute and the Director has discretion to require a lesser offset. The exercise of that discretion, however, would still need to ensure reasonable further progress toward attainment of water quality standards. If a lesser offset would not ensure reasonable further progress, today's proposal would maintain the Agency's authority to object to the issuance of the permit.

Today's notice does not propose changes to the regulatory text describing the Regional Administrator's grounds for permit objections because the Agency believes the existing regulations would provide the bases for such objections. If the Agency were to object to a State permit for failure to ensure reasonable further progress, the objection would be based on 40 CFR 123.44(c)(1), (3), (4), (7) and/or (8). Subsection (c)(1) refers to a permit that fails to apply or ensure compliance with any applicable requirement of 40 CFR part 123. Though the 1.5 offset criterion would not be a requirement, today's proposal would require offsets that ensure reasonable further progress. If an offset less than 1.5 would not ensure reasonable further progress, the permit would fail to apply a requirement of 40 CFR part 123 (section 123.25 specifies the NPDES permitting requirements in 40 CFR part 122 that apply to State NPDES programs, including 40 CFR 122.4). Subsection (c)(3) refers to a permit issued using procedures that fail to comply with procedures required by the CWA, implementing regulations, or by the Memorandum of Agreement. If a State did not adequately explain why an offset less than 1.5 would ensure reasonable further progress, the issuance of such a permit would not comply with applicable procedural requirements. Subsection (c)(4) refers to a permit that misinterprets the CWA or any guidelines or regulations or misapplies them to the facts. Issuance of a State permit that would not ensure reasonable further progress would misinterpret the CWA or misapply applicable requirements. Subsection (c)(7) restates the statutory standard that the issuance of the proposed permit could not be outside the requirements of the CWA or implementing regulations. Finally, subsection (c)(8) refers to the effluent limits of a permit that fails to satisfy the requirements of 40 CFR 122.44(d) (section 122.44(d) requires that effluent limits achieve water quality standards). The issuance of any permit to a source required to obtain an offset would not satisfy the requirements of 40 CFR 122.44(d) if the permit would not ensure reasonable further progress toward attainment of water quality standards.

While the Agency believes that changes to regulatory text are unnecessary, EPA invites comment on whether to include an explicit basis for objection in any final rule. The purpose of any explicit regulatory text would be to clarify that the Agency could object to the issuance of a State permit to a source required to obtain an offset if the issuance would not ensure reasonable further progress toward attainment of water quality standards.

EPA also recognizes there may be limited circumstances where requiring

offsets will result in further degradation of water quality, and loss of an existing use. Therefore, EPA is proposing that the Director also have the discretion to not require an offset, if it is determined that any offset would result in further degradation of water quality. Such degradation may occur, for example, when the sole NPDES discharger, with a low volume but high concentration of a pollutant such as phosphorus, discharges to an ephemeral or low flow waterbody which is currently not attaining the water quality criteria for phosphorus and where the only other sources of phosphorus are from irrigation return flows. If the sole discharger negotiates a reduction of irrigation return flows to offset its phosphorus loads, it may result in increased ambient phosphorus concentrations due to the loss of volume in the waterbody, and further degradation of water quality. In circumstances such as these, although limited and infrequent, EPA believes the Director should have the discretion to waive the requirement for any offset in order to prevent further degradation of water quality and the loss of an existing use. For the reasons described earlier, the Agency also proposes to retain authority to object to the issuance of a State permit for a source required to obtain an offset if the State Director inappropriately waived the offset requirement concluding that the offset would result in further degradation of water quality.

Finally, the new provision at 40 CFR 131.12(a) proposes that reasonable further progress for large new dischargers and existing dischargers undergoing a significant expansion means, *at a minimum*, an offset greater than the amount of the proposed discharge. The proposed regulation, therefore, provides the permitting authority with the discretion to require additional measures to attain reasonable further progress. The permitting authority may choose to exercise this discretion depending upon, for example, the severity of the impairment of the waterbody, the type of pollutant, or the distance of the offsets from the new discharge. Such additional measures could include pollution prevention plans or conservation easements which could ensure continued reasonable further progress. EPA invites comment on what measures, in addition to the offset requirement, permitting authorities should consider requiring of large new dischargers and existing dischargers undergoing a significant expansion.

EPA believes an offset requirement of one and half times the amount of the increased loading the discharger is proposing to discharge (with exceptions) is appropriate and invites comment on whether a different amount would be better suited to ensuring reasonable further progress toward restoring water quality standards prior to the approval or establishment by EPA of TMDLs. EPA invites comment on whether there may be reasons, other than uncertainty, why the Director may find it necessary to adjust the offset requirements in amounts greater than one and half times the proposed discharge. EPA also invites comments on whether the Director should have the discretion to allow an offset less than one and half times the proposed discharge, but at least greater than the amount of the proposed discharge and if so, for what reasons. One option would be to require an offset at least equal to the amount of the proposed discharge, but allow the Director the discretion to determine how much progress beyond a one to one offset is necessary to ensure reasonable further progress. Finally, EPA invites comment on whether the Director should have the discretion to waive the requirement for an offset if any offset would result in further degradation of water quality. If not, for what reasons and also, if the concurrence of EPA should be required before the Director makes such a determination.

iv. Would the Reasonable Further Progress Requirements Apply to Affected Dischargers Proposing to Discharge to All Waters of the U.S.?

EPA is establishing a new provision at 40 CFR 131.12(a)(1)(ii) that requires a new discharger or existing discharger undergoing a significant expansion discharging into a waterbody that does not meet water quality standards, and for which EPA has not yet approved or established a TMDL, the pollutant(s) causing the non-attainment to achieve reasonable further progress toward attaining water quality standards. Thus, this provision applies to a new discharger or existing discharger undergoing a significant expansion discharging into any waterbody of the United States that does not attain water quality standards (as defined in 40 CFR 131). Where a waterbody receives a thermal discharge from one or more point sources, impaired means that the waterbody does not have or maintain a balanced indigenous population of shellfish, fish, and wildlife. Exceedance of a narrative criterion in a waterbody means that the waterbody does not attain water quality standards.

v. Why is EPA Proposing to Subject Only New Dischargers and Existing Dischargers Undergoing a Significant Expansion to These Requirements?

EPA is proposing today to establish the offset requirement discussed above only for large new and significantly expanding dischargers of the pollutant of concern into an impaired waterbody. EPA believes that this new requirement is appropriate for these dischargers because it will enable discharges to occur in impaired waterbodies while ensuring that progress toward attaining water quality standards is achieved in those waterbodies. EPA believes that subjecting large new and significantly expanded dischargers to more stringent water quality standards is supported by the same logic which led Congress to establish more stringent technology based requirements for new sources under other provisions of the CWA.

Given that this offset provision would be a requirement only until a TMDL is approved or established by EPA for a waterbody not attaining water quality standards, it makes sense as a practical matter to apply this requirement only to large sources which are adding new loads of the pollutant of concern to the waterbody. Existing dischargers are likely to be in a poorer position to bargain for offsets because they may not have a realistic option to locate on a different waterbody. Furthermore, it might be very disruptive to existing dischargers if they were required to offset their discharge before a TMDL is established only to possibly receive different permit limits and conditions once wasteload allocations and a margin of safety are established in a TMDL. EPA seeks to avoid these disruptions if possible. Finally, new dischargers will be undertaking construction and will be in a better position to modify their design so as to minimize pollution, and thus minimize the amount of their offset.

EPA also believes that subjecting for new and significantly expanding dischargers to these new requirements is consistent with the CWA more generally. In its technology-based provisions, the Act provides a higher standard (best available demonstrated technology under new source performance standards) for new sources than for existing sources (best available technology economically available). Although in this regulation, EPA is addressing new dischargers and significantly expanding dischargers rather than ''new sources,'' EPA believes Congress' rationale for its treatment of new sources applies equally to new dischargers and significantly expanding dischargers. Congress chose to place more stringent technology based requirements on new sources both to

prevent new water quality impairments and because imposing stricter standards on new sources would be the most efficient means of solving existing water quality problems. Here, the Agency is proposing to regulate more stringently two types of dischargers which are adding new loads of a pollutant of concern to ensure reasonable further progress toward attaining of water quality standards.

First, consistent with other provisions in EPA regulations, EPA is proposing to treat new dischargers more stringently than existing dischargers. An example of such treatment is the extent to which variances to water quality standards are available to new dischargers when compared to existing dischargers. See 63 FR 36761. Compliance schedules have also not been available to new dischargers to the same extent that they are available for existing dischargers. 40 CFR 122.47. EPA is proposing to further develop this differential treatment of new dischargers by creating new provisions at 40 CFR 122.4(j) and 131.12(a)(1)(ii). These provisions together will subject new and significantly expanding dischargers proposing to discharge into impaired waterbodies to the new requirements outlined but not existing dischargers under the same or similar circumstances.

Second, EPA also believes that it is appropriate to extend these requirements to significant expansions of existing discharges due to the similar impacts which occur as a result of significant new pollutant loads. EPA believes this is consistent with the general approach of the CWA to prevent new water quality pollution problems. Although these sources are existing sources, their ''significant expansions'' will have the same or similar effect with respect to creating new water quality impairments as the truly new source. Undertaking a significant expansion may provide certain opportunities for a discharger to achieve efficiencies in solving water pollution problems, similar to the opportunities available to new sources. EPA's proposed definition of ''significant expansion'' is discussed above (see Section A5).

EPA invites comments on whether the requirement for offsets should apply to both new and significantly expanding dischargers, and reasons why the requirement should apply to one class of discharger versus another.

vi. Would All New Dischargers and Existing Dischargers Undergoing a Significant Expansion Be Subject to These Proposed Requirements?

EPA is proposing today to subject only those new and significantly expanded dischargers not meeting the definition of a small entity under the Regulatory Flexibility Act (see 5 U.S.C. 601(6)) to the offset requirements of this rule. The Regulatory Flexibility Act (''RFA'') states that the term ''small business'' has the same meaning as the term ''small business concern'' under section 3 of the Small Business Act (SBA). This meaning holds unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**. 5 U.S.C. 601(3). EPA has not proposed to establish a different definition of the term for this proposed rule.

The SBA defines ''small-business concern'' as one which is independently owned and operated and which is not dominant in its field of operation. 15 U.S.C. 632. Pursuant to the SBA, the Small Business Administration has specified additional detailed definitions or standards by which a business concern may be determined to be a small business concern. Also under the RFA, the term ''small organization'' means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. This meaning holds unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**. 5 U.S.C. 601(4). The term ''small governmental jurisdiction'' means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand. This meaning also holds unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the **Federal Register**. 5 U.S.C. 601(5). Again, EPA has not proposed alternative definitions for purposes of this rule. Finally, the term ''small entity'' has the same meaning as the terms ''small business'', ''small organization'' and ''small governmental jurisdiction'' defined in the RFA. 5 U.S.C. 601(6).

EPA is proposing to limit the scope of this new provision because it is a new requirement which is needed only in the interim before TMDLs are approved or established by EPA. Also, such narrowed coverage is more likely to ensure development of a successful market for pollutant trading.

In today's proposal, EPA is requiring large (i.e., not meeting the definition of a small entity under the Regulatory Flexibility Act (see 5 U.S.C. 601(6)) new and significantly expanding dischargers to offset any increase in mass loadings. EPA believes this is an important step toward achieving the CWA goal to ''* * * restore and maintain the chemical, physical and biological integrity of the Nation's waters.'' Section 101(a). In exercising its discretion to impose this new requirement on large dischargers, EPA notes that all dischargers will continue to need permit limits that derive from and comply with water quality standards (see 40 CFR 122.44(d)). In evaluating the significant number of the nation's waters on State section 303(d) lists, and the amount of time necessary for States to establish and implement TMDLs, EPA concluded that in the interim period before a TMDL is approved or established by EPA, it is necessary to establish a new requirement in an effort to ensure reasonable further progress toward attaining water quality standards, consistent with the goals of the Act. The requirement is thus, both incremental and interim, and at this time EPA is choosing to impose it only on those dischargers the Agency believes are in the best position to achieve offsets.

a. How Would This Proposal Facilitate the Establishment of Trading Markets?

In developing these revisions to the federal antidegradation policy, EPA considered the most likely approach by which to establish a trading mechanism between new and existing dischargers undergoing a significant expansion, and existing sources of pollutants. In effect, EPA is seeking to establish a market for pollutant trading, in the hopes of creating more effective and efficient mechanisms for restoring water quality. EPA believes that requiring offsets from facilities which are not small entities, as defined by the Regulatory Flexibility Act, will focus the initiation of such a market on those entities which have the greatest likelihood of securing offsets. Large dischargers are more likely to have access to data and information, both environmental and economic, that can be used in identifying, analyzing and allocating offsets. Large dischargers are also more likely to have the resources to devote to negotiating offsets with other entities.

EPA recognizes that establishing the framework for such a market in pollutant trading presents many challenges. Nonetheless, EPA believes that creating the offset requirement would provide a valuable mechanism for ensuring reasonable progress toward attaining water quality standards. EPA believes the expenditure of resources to establish a market in pollutant trading will be compensated for by such factors as reduced overall costs in meeting water quality standards, the ability to locate a new enterprise or expand an existing enterprise, and increased flexibility in designing pollution control systems. Such a market, once established, would also provide other, more efficient opportunities for improving water quality, as States and Tribes implement watershed protection programs. EPA has developed draft guidance on how to conduct watershed-based trading which addresses the benefits and types of trades and how trading can be implemented to attain and maintain water quality standards. Draft Framework for Watershed-based Trading, EPA 800-R–96–001, May, 1996.

Trading in pollutant discharges is not a retreat from the CWA goals. It can be a more efficient, market driven approach to meeting these goals. EPA supports only trades that meet CWA requirements. Through trading, EPA seeks to encourage innovative approaches and the flexibility to implement load reductions in ways that maximize water quality improvements and minimize costs. In allowing offsets as the means to ensure reasonable further progress toward attaining the water quality standard, EPA is seeking to generate environmental benefits in the most cost-effective manner.

EPA invites comments on whether the requirement for offsets as a means of ensuring reasonable further progress should be limited to entities which are not small entities as defined by the Regulatory Flexibility Act. EPA also invites comments on extending this requirement to other entities which may be small entities under SBREFA.

C. How Would EPA Ensure Any Needed Changes to the Antidegradation Policies in State, Territorial and Tribal Water Quality Standards?

With this notice of proposed rulemaking, EPA is initiating development of Federal water quality standards pursuant to section 303(c)(4)(B) of the CWA. EPA intends to promulgate, as the EPA Administrator determines necessary, Federal water quality standards for any State, Territory or Tribe which does not adopt or already have in place water quality standards which include provisions consistent with 40 CFR 131.12(a)(1)(ii) as ultimately promulgated. EPA believes such a Federal promulgation could be necessary to ensure consistent, nationwide application of any final provisions of 40 CFR 131.12(a)(1)(ii) in the period before the establishment of TMDLs for waterbodies that do not meet water quality standards. EPA is today providing notice of the Agency's intent for the Administrator to make a determination whether a Federal promulgation is necessary for any State, Tribe or Territory. EPA will delay this determination to allow States, Territories and Tribes the opportunity to adopt their own water quality standards. Any State, Territory or Tribe which expeditiously acts to adopt standards consistent with the Agency's final promulgation of this section would not be included in the proposed Federal water quality standards. Further, EPA would initiate withdrawal of any Federal promulgation for a State, Territory or Tribe that adopts standards consistent with 40 CFR 131.12(a)(1)(ii).

EPA acknowledges that many States, Territories and Tribes may face difficulties in completing adoption of water quality standards in the time frame envisioned by the Agency. Nonetheless, EPA believes it is important to have this mechanism firmly established in State, Territorial or Tribal water quality standards in order to ensure reasonable further progress toward restoring designated uses in the period of time prior to the completion of TMDLs. This requirement would only apply prior to the establishment and implementation of the TMDL for a waterbody not meeting water quality standards.

D. How Would These Changes Be Implemented Through NPDES Permits?

New dischargers or existing dischargers undergoing a significant expansion are required, under 40 CFR 122.4(i), to have permit limits or conditions that ensure that they will not cause or contribute to a violation of water quality standards. A new discharger or an existing discharger undergoing a significant expansion required to offset their proposed discharge pursuant to 40 CFR 131.12(a)(1)(ii), would also be subject to additional requirements relating to the mechanics of obtaining and maintaining an offset. EPA believes that these additional, new requirements are necessary to ensure that the offsets will in fact be realized. Each of these requirements are specified in a new section 40 CFR122.4(j)(2), and explained in detail below.

1. Must the New or Significantly Expanding Discharger Obtain an Offset of the Same Pollutant(s) the New or Significantly Expanding Discharger Would Be Required To Offset?

Proposed 40 CFR 122.4(j)(2)(i) would require the discharger seeking an offset to obtain the pollutant load reductions from one or more sources of the pollutant(s) for which the waterbody is impaired. This pollutant(s) must also be the same pollutant(s) the new or existing discharger undergoing a significant expansion would be required to offset. For example, the waterbody may be impaired by both copper and lead. If a new discharger wishes to discharge copper (and not lead), the discharger must obtain the requisite amount of pollutant load reductions from a source(s) that is currently discharging copper into the waterbody.

EPA recognizes that there may be circumstances where reasonable further progress toward attaining water quality standards could best be served by allowing the Director the discretion to offset a new or expanded discharge of one pollutant with a load reduction of a different pollutant for which the waterbody is also impaired. EPA, however, is concerned with the technical difficulties of implementing such an option and therefore, is not proposing it. EPA requests comment on the possibility of allowing such discretion and on how the technical difficulty of determining an appropriate offset for a different pollutant could be resolved.

2. From What Geographic Area Would the Pollutant Load Reductions Need To Be Obtained?

Proposed 40 CFR 122.4(j)(2)(ii) would require the discharger to obtain the pollutant load reductions from one or more sources located on the same waterbody as the discharge from the new discharger or existing discharger undergoing a significant expansion. To determine if a source(s) is located on the same waterbody, for purposes of obtaining an offset under 40 CFR 131.12(a)(1)(ii), there would need to be a direct hydrological connection between two sources. For example, there must be a direct hydrologic connection between the outfall of the existing point source where the reductions are realized and the outfall of the proposed discharge.

States should be able to assist in the determination of whether a source is located on the same waterbody. States often identify their waters and assign waterbody identification numbers to specific hydrologic units, often called

segments. States are also required to identify all waterbodies not attaining water quality standards for the purposes of establishing a TMDL. For the purposes of section 303(d) listing, a waterbody pollutant combination will have a unique identifier so that the status of each listed waterbody can be tracked over time. States often delineate these segments based on hydrologic features, such as the presence of a dam, the confluence of two rivers, or gradations of salinity in an estuary. If a source is located on a waterbody with the same identification number, this would be a good indication that it is located on the same waterbody for purposes of obtaining an offset. EPA invites comment on other conditions that would identify whether a source is located on the same waterbody. EPA believes this requirement is reasonable, as is 40 CFR 122.4(j)(2)(i), because it ensures that the results from the offset will be effective in benefitting waterbodies not attaining water quality standards for a particular pollutant(s).

EPA intends the offset to result in reasonable further progress toward attaining water quality standards. The most appropriate hydrologic unit, and therefore geographic area within the same waterbody, depends on site-specific hydrologic conditions such as water chemistry, ecological parameters, and the location, number and types of sources already discharging to that waterbody. An offset can be obtained from a source located downstream from the new or significantly expanding discharger provided that source is discharging to the same body of water. An offset would not be appropriate if obtained outside of the impaired waterbody in which the new or significantly expanded discharger is located. EPA would also like comment on whether sources providing pollutant load reductions for offsets, should be located only upstream of the new or significantly expanding source.

EPA recognizes that air deposition contributes to some of the water quality problems that exist today. EPA is considering whether to allow an offset from an air pollution source emitting the same pollutant the new or significantly expanded discharger is proposing to discharge. EPA would consider this only where the air pollution source directly affects the waterbody in the vicinity of the new or significantly expanded discharge. EPA invites comment on how some of the additional requirements related to obtaining an offset would be met if EPA allowed dischargers to obtain offsets from an air pollution source(s). In particular, EPA invites comment on whether the requirement in 40 CFR 122.4(j)(2)(v) (discussed below) to modify an offsetting source's NPDES permit to reflect the required reductions should be expanded to require permit modifications when offsets are obtained from permitted air pollution sources. 40 CFR 122.4(j)(2)(v) would require the permit regulating the source from which the offset is obtained to be modified to reflect the pollutant load reductions.

3. Could the Pollutant Load Reductions Come From a Source With Existing Requirements To Reduce its Loads?

Proposed 40 CFR 122.4(j)(2)(iii) would require that the pollutant load reductions be the result of pollutant control measures implemented by, or secured and assured by, the new discharger or existing discharger undergoing a significant expansion. To satisfy this requirement, the discharger must obtain the reductions from one or more sources discharging the pollutant(s) of concern to the same waterbody. If the discharger wishes to obtain the reductions from another source in the same waterbody, the pollutant control measures must be the result of an entirely new agreement and/or requirement for the offsetting source. In other words, if the offsetting source, for any reason other than to satisfy the proposed discharger's offset requirements, was already required to construct or install the pollutant control measures, the proposed discharger could not receive credit for the resulting reductions. EPA believes this requirement is reasonable because the load reductions would be a new requirement on the offsetting source intended to result in reasonable further progress toward attaining water quality standards where such progress was not otherwise required.

4. When Would the Pollutant Load Reductions Need To Be Obtained?

Proposed 40 CFR 122.4(j)(2)(iv) would require the discharger to achieve the pollutant load reductions on or before the date the new or significantly expanding discharger begins to discharge. For reductions to be achieved on or before the discharger begins to discharge, the pollutant control measures would have to be in place. The discharger would also need to satisfy any requirements that the Director determined were necessary to demonstrate that the pollutant control measures were in place and the requisite amount of pollutant load reductions are and will continue to be realized. Such requirements might include sampling, either at the discharge point or instream, and reporting the results of those samples both before and after the pollutant control measures were put in place. The results would need to show that the requisite amount of pollutant load reductions are and will continue to be realized. EPA invites comment on other ways the discharger may make this demonstration.

EPA is also proposing to give the Director the discretion to not require that the pollutant load reductions be obtained on or before the date the discharge commences. The Director would have this discretion in circumstances where the Director determines that a different time frame for obtaining and maintaining the offset would best serve the goal of reasonable further progress toward attaining water quality standards. One example of such circumstances is where it is not possible for the new or significantly expanding discharger to demonstrate that the pollutant load reductions are being realized on or before the date the discharge commences. An example of such a case is where the source of the offset involves a reforestation effort. In this instance, it will take time to produce reduction results because of the time required for trees and/or shrubs for example, to grow.

In exchange for not requiring that the offsets be achieved on or before the date the discharge commences, the Director must require that the discharger obtain pollutant load reductions by an amount of at least twice the amount of the new or expanded discharge. The Agency believes this requirement is reasonable because in exchange for the degree of uncertainty involved in whether the pollutant load reductions will in fact be realized, the discharger will be able to discharge prior to obtaining the reductions. In addition, it ensures that the Director's discretion will be exercised in a way that best serves the goal of reasonable further progress toward attaining water quality standards.

Also, to provide assurances that the offsets will be achieved there would need to be an enforceable and defined schedule with milestones identified and sufficiently laid out in the proposed discharger's permit. The use of this discretion would not be permitted in instances where the TMDL is scheduled to be established before the offset is fully realized. EPA invites comment on this aspect of the proposal including whether the Agency should provide for these exceptions to the requirement that the pollutant load reductions be achieved on or before the date the discharge commences.

5. How Long Would the Pollutant Load Reductions Need To Be Maintained?

Reductions would also need to be maintained until the TMDL for the waterbody is approved or established by EPA or until the new or significantly expanding discharger ceases to discharge. Where a TMDL has been approved or established by EPA, the new or significantly expanding discharger would need to maintain the reductions until its permit contained effluent limits or conditions consistent with its WLA in the TMDL. To maintain the reductions, regular monitoring reports would need to be submitted to ensure their continued achievement. Depending on the source(s) from which the discharger is obtaining the reductions (see discussion below under sections D6 and D7), the reports might be submitted by either the discharger or the offsetting source(s). The permitting authority would determine the appropriate number of samples and how often monitoring reports would need to be submitted. The Agency emphasizes that it is not sufficient for the TMDL to be approved or established by EPA; the new or significantly expanding discharger would also need to have limits or conditions in its NPDES permit that reflect its WLA in the TMDL. At that point, the discharger's WLA under the TMDL would supercede the offset requirements.

Also, if the discharger stops discharging prior to the time a TMDL for the waterbody is approved or established, the discharger would no longer be required to maintain the reductions. For example, if a new construction operation is expected to last eight months and the TMDL will not be established for six years, the new discharger (construction operation) need only maintain the reductions for the time in which the discharge from the operation is ongoing (eight months).

EPA believes this requirement is reasonable because the offset is a condition of being permitted to discharge. Therefore, it should be in place on or before the discharger starts to discharge, unless this requirement is modified by the Director under 40 CFR 122.4(j)(2)(iv)(B), and remain in place until the discharger either stops discharging or until the TMDL is established and implemented with respect to that discharger. Again, EPA intends that this requirement be an interim measure and notes that the TMDL process is the appropriate means of determining WLA/LAs that are necessary to attain and maintain water quality standards. EPA does, however, invite comment on requiring the offset to be maintained indefinitely (before and after the TMDL is established). Requiring the offset to be maintained both before and after the TMDL would prevent reintroducing pollutants to a waterbody where they have already been removed, although this issue should be addressed in the development of the TMDL itself.

6. What Would Be Required When the Source of the Offset Is an Existing Point Source?

Proposed 40 CFR 122.4(j)(2)(v) would require that where a discharger obtains pollutant load reductions from an existing point source(s), as defined in the CWA, that existing point source(s)'s NPDES permit would need to be modified to reflect the reductions. The permitting authority would also need to consider the need for any additional monitoring and reporting requirements to ensure that the reductions are being maintained. This modification would need to take place on or before the date the new permit is issued to the proposed discharger. EPA believes this requirement is reasonable because requiring that the permit for the existing point source(s) be modified to reflect the reductions creates a level of accountability. This accountability stems from the reductions being contained as permit limits in an enforceable permit. If the existing point source(s)'s discharge monitoring reports do not show that the reductions are being realized, the point source(s) would not be in compliance with its permit and thus, would be subject to an enforcement action.

The Agency again, notes that because the existing point source(s)'s permit would be modified to reflect the reductions, the offset requirement would be accounted for as a result of that modification. Therefore, it would not be necessary to incorporate the offset requirements in the new or significantly expanding discharger's permit. The Agency recognizes that there may be additional costs and delays associated with modifying the offsetting source's permit to reflect the reductions and therefore, requests comment on suggestions for a streamlined approach to accounting for the offset requirements. In particular, the Agency invites comment on incorporating the offset requirement in the new or significantly expanding discharger's permit rather than the modifying the existing point source(s)'s permit.

Today's proposal would require the existing, offsetting point source(s)'s permit to be modified to reflect the pollutant load reductions on or before the date a permit is issued to the new or significantly expanding discharger. EPA notes that there may be a time period during which the existing offsetting point source(s)'s permit has been modified but the proposed discharger has not yet begun discharging. EPA expects that this time period, if any, would be short-term. However, if there is a significant delay before the new or significantly expanding discharger starts to discharge, one option would be to place alternate effluent limits in the existing discharger's permit. One limit would be applicable before the proposed discharger starts to discharge and the other limit would be applicable after the proposed discharger starts to discharge. EPA invites comment on the idea of placing alternate effluent limits in the permit for the offsetting source.

EPA also recognizes that the source from which the offset is obtained may be discharging at levels less than their current permit limits. In these cases, the baseline used to calculate the appropriate reductions would be the offsetting source's actual and current loads not their current permit limit. It is EPA's intent that the offsets result in corresponding reductions in actual loads despite the existence of a higher permit limit. The offsetting source's permit would then need to be modified to reflect the corresponding reductions in actual loads. This does not necessarily mean that the permit limits would be adjusted to match the new actual load. Sources often target a discharge level below the permitted amount in order to ensure continuous compliance. In fact, EPA believes that well operated sources should do this. It is likely that a source which was discharging below its original permit limits would continue to target a discharge level below any new permit limits designed to implement an offset. The exact permit limits necessary to implement the offset would be determined on a case-by-case basis by the permitting authority.

7. What Would Be Required When the Source of the Offset Is an Existing Nonpoint Source?

Proposed 40 CFR 122.4(j)(2)(vii) would require that where a discharger obtains pollutant load reductions from an existing nonpoint source(s), the discharger's NPDES permit would need to contain any conditions necessary to ensure that the load reductions from the nonpoint source will be realized. These include such things as the offset requirements themselves and any accompanying monitoring and reporting requirements to ensure continued achievement of the pollutant load

reductions (from the nonpoint source(s)). The Director may also wish to establish alternate effluent limits in the permit for the new discharger that would become effective if and when the pollutant load reductions are not maintained. EPA invites comment on whether to require the permitting authority to include alternate effluent limits in the new or significantly expanded discharger's permit.

EPA believes the requirement in proposed 40 CFR 122.4(j)(2)(vi) is reasonable for the same reasons stated above for 40 CFR 122.4(j)(2)(v). Requiring the offset and accompanying monitoring and reporting requirements to be placed in the proposed discharger's permit creates a level of accountability as a result of being contained in an enforceable permit. If the discharger's monitoring reports do not show that the reductions are being realized or if the discharger is not in compliance with an alternate permit limit, the discharger would not be in compliance with its permit and would be subject to an enforcement action. Assuming there is an enforceable contract between the new or significantly expanding discharger and the nonpoint source (the agreement under which the pollutant load reductions will be achieved and maintained), in the event that there is a lack of reported reductions which is at the fault of the nonpoint source, the discharger should have an enforceable remedy against the nonpoint source (*e.g.*, under contract law). Contract law may allow the new or significantly expanding discharger to recover costs or other remedies they negotiated in their agreement (any remedies the new or significantly expanding discharger may have against the nonpoint source would be a product of State contract law, outside of the NPDES permitting context).

8. How Would Offsets Be Obtained From Sources Seeking Coverage Under a General Permit?

Determining whether and in what amount an offset would be required from dischargers seeking coverage under a general permit would necessarily differ from the same determinations for dischargers applying for individual permits. Several issues arise with respect to dischargers seeking coverage under a general permit when the discharge would be to a waterbody not attaining water quality standards. The first issue is whether and how the discharger would know if the receiving water is one that does not meet water quality standards. Most discharges seeking coverage under a general permit are required to submit a notice of intent (NOI) form to claim authorization to discharge. However, there is typically no information requested on the NOI, other than identifying the latitude and longitude of the facility that would help to identify the water quality status of the receiving water. The second issue is whether the discharger and/or permitting authority would know if the discharger's proposed effluent would contain the pollutant(s) causing the impairment. The third issue is if the pollutant(s) of concern is detected, how would the permitting authority obtain the information indicating the amount of that pollutant(s) the discharger is proposing to discharge. An NOI form typically does not request information on the pollutant(s) expected in the discharge. Absent any explicit information requirement for NOI forms, it is unlikely that the discharger or permitting authority could determine whether a discharger would be required to obtain an offset under proposed 40 CFR 131.12(a)(1)(ii). EPA invites comment on how to fill this information need.

i. What Options Is the Agency Considering?

One option that the Agency is considering to fill this information need would be to amend the general permit regulations at 40 CFR 122.28(b)(2)(ii) and 40 CFR 122.28(b)(2)(v) to require the general permit applicant to provide this additional information. Section 122.28(b)(2)(ii) discusses the contents of an NOI. For purposes of notifying the permitting authority about the localized attainment of water quality standards and to determine whether a proposed discharger would be required to obtain an offset, EPA is considering whether the following language should be included in the general permit provision:

''New dischargers or existing dischargers undergoing a significant expansion (as defined in 40 CFR 122.2) but not those that are small entities (as defined in 5 U.S.C. 601(6)) (see discussion under proposed 40 CFR 131.12) must determine whether the receiving water meets water quality standards. Operators that are discharging or proposing to discharge to a waterbody that does not meet water quality standards and for which a TMDL has not been established and approved must certify that the discharge does not add the pollutant(s) for which the waterbody is impaired. Dischargers that do add the pollutant(s) for which the waterbody is impaired and for which a TMDL has not been established or approved must apply for an individual permit and are subject to the requirements in 40 CFR 122.4(j).''

EPA notes that the Director already has authority to require a general permit applicant to apply for and obtain an individual permit under 40 CFR 122.28(b)(3)(i).

To determine whether the receiving water is impaired, the applicant could contact the appropriate State agency or check the State's 303(d) list of waters not attaining water quality standards. The State may have several ways for the public to access the information in the 303(d) list, including access via the World Wide Web.

The supplemental certification could request the applicant to provide information on the expected contents and amount of pollutant(s) in its proposed discharge. This type of information would assist the applicant and the permitting authority in identifying whether the pollutant of concern is in the proposed discharge and if it is, to determine what, if any, offset is required. The contents of this supplemental certification could be similar to the contents of Item V on Form 2D but focused on the pollutant(s) for which the waterbody is impaired. Some new applicants for EPA-issued individual permits use NPDES application Form 2D. EPA Form 3510–2D (9/86). The permit application regulations at 40 CFR 122.21(k)(5) (as reflected at Item V on Form 2D) require each applicant to estimate and report data on the pollutants that the applicant expects to discharge (per outfall). Sampling and analysis are not required for purposes of the application requirement. If data from such analyses are available, however, then that data should be reported. Section 122.21(k)(5) and Parts A–C of the application require the applicant to provide an estimate of the maximum daily and average daily value for certain identified pollutant(s). This estimate is based on the applicant's determination of whether a pollutant will be present in their discharge. The applicant could base this determination on knowledge of the proposed facility's raw materials, maintenance chemicals, intermediate and final products, byproducts, and any analyses, if available, of their effluent or of any similar effluent.

Other sources upon which to base the estimate could include available in-house or contractor's engineering reports and any other studies performed on the proposed facility. Also, if an effluent guideline applies to the facility or similar facilities, then the development document to the effluent guideline may provide additional information. If there is an applicable effluent guideline and the pollutant(s) of concern is not addressed in the guideline, however, this would not be conclusive evidence that the pollutant(s) of concern is not present. If

the applicable effluent guideline does address the pollutant(s) of concern, that recognition should be considered as a rebuttable presumption that the pollutant(s) of concern will, in fact, be present in the discharge.

EPA is also considering another option to fill this information need. This option would require these dischargers to submit a supplemental certification that they have already obtained and are continuing to maintain the requisite offset requirements. However, EPA has concerns about how this would work. In particular, EPA is concerned with how this permit applicant would determine the amount of the pollutant(s) of concern in its proposed discharge and in turn, determine the amount of required offset. When determining the proper offset required in an individual permit, the Director would have discretion to consider a number of variables. For example, if the applicant decides to obtain offsets from a nonpoint source, maintenance of the offset could remain highly uncertain. To compensate, the Director could appropriately require the applicant to obtain and maintain a greater offset (see discussion above in section (B)(3)(iii)(b)). Given discretionary considerations such as these, offset determinations may be difficult to implement for general permittees. EPA requests comments on how such compensation could be implemented, where necessary, for general permit applicants under this option.

EPA is considering a third option for general permittee offsets. This option would allow the general permits themselves to contain alternative sets of requirements depending on whether the discharge would be to a waterbody meeting water quality standards or a waterbody not meeting water quality standards. For permitted discharges to waterbodies not meeting water quality standards, requirements would be more stringent and/or prescriptive than those required for discharges to waterbodies that do meet water quality standards. Some general permits currently provide such differing requirements. For purposes of satisfying an offset requirement, an option might be to establish the more stringent and/or prescriptive requirements for discharges into impaired waterbodies in lieu of an individualized offset. The reductions needed to ensure reasonable further progress toward meeting water quality standards would be ''built in'' to the general permit. As with the second option discussed above, the permitting authority would not be able to tailor the offset requirements to the specific circumstances and discharge of the individual new or significantly expanding discharger. However, this option could allow the permitting authority to establish conditions in the general permit necessary to ensure that collectively, new and significantly expanding dischargers obtained offsets sufficient to achieve reasonable further progress toward attaining water quality standards. EPA invites comments on whether to allow more stringent and/or prescriptive requirements for discharges into impaired waterbodies in the general permit in lieu of requiring an individual permit.

General permitting also creates complications regarding the requirements in 40 CFR 122.4(j)(2). In particular, the Agency anticipates it would be difficult to implement the specific requirements applicable when offsets are obtained from an existing nonpoint source(s). In these cases, an individual permit would need to include conditions necessary, including the offset requirements and any accompanying monitoring and reporting requirements, to ensure continued achievement of the reductions. EPA invites comment on how this requirement should be addressed in general permits.

EPA requests comment on these three options as well as other possible approaches for satisfying the offset requirements for new or significantly expanding dischargers applying for a general permit and proposing to discharge into impaired waterbodies. In particular, EPA requests information on the burdens these options impose on regulated entities and State permitting authorities. EPA also requests comment on the water quality benefits of the three options and on whether the definition of a significant expansion should be different for general permittees than for individual permittees.

ii. What If a Notice of Intent Form Is Not Required?

General permitting presents additional implementation problems when an NOI form is not required. One option would be to amend 40 CFR 122.28(b)(2)(v), which authorizes the Director to allow certain dischargers to be covered under a general permit without submitting an NOI. This section also identifies some sources for which the Director does not have this discretion. EPA is considering including new dischargers and existing dischargers undergoing a significant expansion (but not those that are ''small entities'' as defined in 5 U.S.C. 601(6)), in the list of sources for which the Director would not have the discretion to waive the submission of an NOI. EPA invites comment on how this additional concern might be addressed.

iii. Who and Under What Circumstances Would Need To Submit a Supplemental Certification?

EPA recognizes that the language suggested above for an amendment to 40 CFR 122.28(b)(2)(ii) would require only new dischargers and existing dischargers undergoing a significant expansion that are not small entities as defined in 5 U.S.C. 601(6) to provide an additional certification for discharges to a waterbody not attaining water quality standards. Not requiring all new dischargers and existing dischargers undergoing a significant expansion to make this certification is consistent with the proposed requirements at 40 CFR 131.12(a)(1)(ii) because the offset requirement would only apply to those dischargers who are not considered ''small entities'' (as defined in 5 U.S.C. 601(6)). Dischargers who do not fall within the definition of a small entity would be able to seek coverage under a general permit.

iv. How Would Offsets Be Determined for Dischargers Regulated Solely by BMPs?

Once it is determined that an offset is required, the amount of offset required must be determined as well. This issue is particularly important for applicants seeking coverage under a general permit. This issue involves how to determine the appropriate offset requirements (or offset equivalents) for dischargers regulated solely by best management practices (BMPs). For example, would it be appropriate to require more stringent BMPs, or additional ''offsetting'' BMPs from other sources in lieu of a pound-for-pound offset? EPA invites comment on how to address this issue as well.

E. Additional Proposed Modifications to Related NPDES Provisions

1. How Is EPA Proposing To Modify the Water Quality-Based Permitting Regulations?

EPA is today proposing to include the phrase ''State antidegradation provisions'' in its water quality-based permitting regulations at 40 CFR 122.44(d)(1). Section 122.44 contains the requirements for establishing limitations, standards and other permit conditions in NPDES permits necessary to ensure that NPDES permits are protective of water quality standards. Including this phrase is clarifying only and not intended to create a substantive change. Including this phrase in these provisions gives added notice and clarification to EPA's longstanding policy which is well understood by the

States and the public, including regulated entities, that antidegradation policies and implementation procedures are required elements of State water quality standards.

2. How Is EPA Proposing To Modify the Regulations Pertaining to the Statement of Basis and Permit Fact Sheet?

EPA is also proposing to change both 40 CFR 124.56 and 124.7. EPA believes this is necessary in light of the proposed changes to 40 CFR 122.4(j) and 131.12. Section 124.56 lists specific items which must be placed in the fact sheet required by 40 CFR 124.8 of the NPDES regulations. EPA believes it is necessary to include, in the fact sheet, an explanation of how and why any decision was made by the Director with respect to any offsets required under 40 CFR 131.12. These include such things as the amount of the proposed discharge the new or significantly expanding discharger is required to offset as well as any monitoring and reporting requirements. Section 124.7 requires that a statement of basis be prepared in all situations where a fact sheet is not required. The contents of a statement of basis are similar to that of a fact sheet. EPA believes including this information in the fact sheet or in the alternative, the statement of basis, is appropriate for several reasons. The decisions regarding any offset will be dependent upon the specific facts and circumstances of a given scenario and therefore, those facts and circumstances should be made apparent. The public has a right to know how and why these decisions were made. EPA, to facilitate its authority to review permits, needs this information as well. This information is necessary for any appeals brought against the issuance of the permit or conditions therein contained.

III. Proposed Authority To Designate Additional Sources of Pollutants as Subject to the NPDES Program

The NPDES regulations, in several provisions and under certain circumstances, allow the permitting authority and/or EPA to subject certain previously non-designated sources to NPDES program requirements. EPA established these jurisdictional regulations in 1973 when the Agency and the States focused permitting resources primarily on continuous discharges, for example, industrial and municipal sources. Also, in the early stages of CWA implementation, the Agency and the States focused on implementation of technology-based standards. At that time, EPA attempted to limit the scope of the NPDES permitting program to certain types of point sources. The D.C. Circuit rejected that attempt, however, and explained that EPA could not exempt point sources from the NPDES program. *NRDC v. Costle,* 568 F.2d 1369, 1377 (D.C. Cir. 1977). Although the Court rejected this attempt, it did recognize the Agency's discretion to define ''point source'' and ''nonpoint source.'' The existing NPDES regulations identifying animal production and silvicultural sources represents an early attempt to do so.

Today EPA is proposing certain changes to the NPDES regulations regarding designation of point sources for regulation under the NPDES permitting program. These point sources include discharges from animal production and silvicultural activities. EPA is proposing explicit language describing its authority, in States with approved NPDES programs, to designate animal feeding operations (AFOs) and aquatic animal production facilities (AAPFs) as sources subject to NPDES program requirements on a case-by-case basis. EPA regulations currently provide that ''the Director'' may, under certain circumstances, designate such facilities as point sources subject to NPDES requirements. The term ''Director'' is defined as the EPA Regional Administrator or the State Director, as the context requires, or an authorized representative. See 40 CFR 122.2. The definition explains that when there is an approved State program, ''Director'' normally means the State Director but that in some circumstances, EPA retains the authority to take certain actions even when there is an approved State program. Today's proposal includes explicit language describing EPA's authority, under certain conditions, to designate animal production facilities as sources subject to NPDES permitting. Today's proposal would also modify the regulation that identifies silvicultural point sources.

A. How Would Animal Feeding Operations and Aquatic Animal Production Facilities Be Affected by Today's Proposal?

Some of the sources that would be affected by today's proposal include animal feeding operations (AFOs) and aquatic animal production facilities (AAPFs) located in States authorized to administer the NPDES program. In a 1995 guidance document, entitled ''Guide Manual on NPDES Regulations for Concentrated Animal Feeding Operations,'' EPA stated that in authorized States, only the State Director may designate an AFO as a concentrated animal feeding operation (CAFO). Today, EPA proposes to revise the regulations to state that EPA may, under certain circumstances, designate AFOs as CAFOs and also designate AAPFs as concentrated aquatic animal production facilities(CAAPFs), in NPDES-authorized States. The revised regulations would facilitate EPA's provision of reasonable assurance that EPA-established TMDLs will be implemented where States fail to establish an approvable TMDL.

This proposal applies to aquatic animal production facilities and not aquaculture projects. Although both types of operations produce aquatic livestock, aquatic animal production facilities differ from aquaculture projects. Aquaculture projects confine aquatic stock within jurisdictional waters of the United States. An aquatic animal production facility does not confine aquatic stock in jurisdictional waters of the United States. The aquatic area of confinement (e.g., manmade pond, raceway, etc.) may, however, discharge to jurisdictional waters of the United States. Aquaculture is specifically addressed in the CWA. CWA section 318. The statute does not specifically address aquatic animal production outside of waters of the United States, however, it is addressed in EPA regulations, as discussed above.

1. How Do These Sources Currently Become Subject to the NPDES Program?

Under existing regulations, concentrated animal feeding operations and concentrated aquatic animal production facilities are subject to the NPDES program. One situation in which an animal feeding operation or an aquatic animal production facility is considered ''concentrated'' and thus subject to NPDES permitting, is when the Director so designates the operation or facility on a case-by-case basis. See 40 CFR 122.23(c) and 122.24(c). Case-by-case designations are based on a determination that the operation or facility is a significant contributor of pollutants to waters of the United States. In designating an operation or facility as a significant contributor of pollutants, the Director essentially finds that the facility's discharges are more like point sources already subject to NPDES regulation than those agricultural nonpoint sources that are not.

i. Under What Circumstances Are CAFOs Designated on a Case-By-Case Basis?

EPA regulations define which AFOs qualify as CAFOs based on various criteria set out in the regulations. These criteria were established for a ''basic national standard and practical administrative approach.'' See 40 FR

54182, 54183 (11/20/75). To supplement this approach, EPA included a designation mechanism in the regulations. Through this mechanism, even where a source did not meet all of the regulatory criteria to become a CAFO, the Director, upon determining that the source is a significant contributor of pollutants to waters of the United States, could exercise its discretion and designate the source as a CAFO to ensure that the source would be regulated. In making this determination, the Director conducts an on-site inspection of the facility and considers the following factors: (1) The size of the animal feeding operation and the amount of wastes reaching waters of the United States; (2) the location of the animal feeding operation relative to waters of the United States; (3) the means of conveyance of animal wastes and process waste waters into waters of the United States; (4) the slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into waters of the United States; and (5) other relevant factors. 40 CFR 122.23(c). One such relevant factor could be the water quality of the receiving water including the degree of nonattainment.

ii. Under What Circumstances Are CAAPFs Designated on a Case-by-Case Basis?

Permitting authorities can also designate any warm or cold water aquatic animal production facility for regulation under the NPDES permitting program on a case-by-case basis. 40 CFR 122.24. The Director, upon determining that the source is a significant contributor of pollutants to waters of the United States, may designate an aquatic animal production facility as a concentrated aquatic animal production facility. To make this determination, the Director conducts an on-site inspection of the facility and considers the following factors: (1) The location and quality of the receiving waters of the United States; (2) the holding, feeding and production capacities of the facility; (3) the quantity and nature of the pollutants reaching waters of the United States; and (4) other relevant factors. 40 CFR 122.24(c).

2. Why is EPA Proposing Changes to the CAFO and CAAPFs Jurisdictional Regulations?

In some areas, pollutant contributions from small unregulated (by NPDES) animal production sources (terrestrial and aquatic) are the primary cause of impairment in some water segments. As indicated in the1996 Report to Congress under CWA section 305(b), agriculture, including both animals and cropland, is the leading source of water quality impairment of rivers and lakes. Based on data collected by the States and Territories, EPA estimated that, of the waters assessed, 25 percent of the impaired river miles, 19 percent of the impaired lake acres, and 10 percent of the impaired estuarine square miles are polluted due to agricultural nonpoint sources of pollutants (EPA,1996). Thirty-eight of the States included specific agricultural sources of pollution in rivers.

i. How do Animal Feeding Operations Impact Water Quality?

Studies show that animal feeding operations, and particularly a concentration of these facilities in a single watershed, can increase nutrient pollution to a river or stream. A study of Herrings Marsh Run in the coastal plain of North Carolina showed that nitrate levels in streams and ground water were highest in areas with the greatest concentration of swine and poultry production. (Hunt, P.G., et al. 1995. Impact of animal waste on water quality in an eastern coastal plain watershed. *IN: Animal Waste and the Land-Water Interface*, Kenneth Steele, Ed., Lewis Publishers, Boca Raton, FL, 589 pp.). Ortho-phosphate levels were affected only slightly by animal waste applications because most of the phosphorus was bound by the soil. (Hunt, et al.,1995).

Results from an Illinois case study indicated that two types of activities at small to medium-sized swine operations contributed to water quality problems. First, many producers had constructed open-front facilities without including manure collection systems to contain feedlot runoff. Second, many producers practiced ''misting''and/or used on-site watering systems to cool off animals, which in turn generated conditions that caused uncontrolled pollutant runoff. This case study demonstrated how even small operations contributed significant amounts of pollutants to the receiving waters. (Ackerman and Taylor, 1995, Stream Impacts due to Feedlot Runoff. *IN: Animal Waste and the Land-Water Interface*, Kenneth Steele, Ed., Lewis Publishers, Boca Raton, FL, 589 pp.).

AFOs can also cause catastrophic effects locally. In June 1995, animal waste contained in an eight-acre lagoon in North Carolina burst through its dike, spilling approximately 22 million gallons of animal waste into the New River. The spill reportedly killed fish along a 19-mile downstream area. This was the worst of six reported spills in the State during the summer of 1995. (EPA Office of the Inspector General, March 1997, Animal Waste Disposal Issues, Audit Report No. E1XWF7–13–0085–7100142).

Several case studies have also been performed to document the water quality benefits of installing animal waste management systems. In South Dakota, for example, 9 feedlots were monitored to determine which most negatively impacted water quality through increased loads of nutrients. After installation of animal waste management systems, several feedlots exhibited evidence of improving water quality in streams. (South Dakota Association of Conservation Districts, South Dakota Department of Environment and Natural Resources, and USDA Natural Resources Conservation Service, 1996, Final Report—Animal Waste Management Team). EPA invites commenters to identify and submit additional data to support or refute these conclusions.

ii. How Do Aquatic Animal Production Facilities Impact Water Quality?

Other studies also indicate that aquatic animal production facilities cause significant adverse impacts on water quality. Such impacts include but are not limited to, oxygen depletion in surrounding waters, degradation of benthic (bottom) ecosystems, and increases in the severity of toxic algae blooms. The impact on water quality, however, varies per fish species and production facility. Pond and tank systems, for example, often discharge pulses of highly concentrated waste discharges during cleaning and harvesting. (Bergheim, A., A. Sivertsen, and A.R.Selmer-Olsen. 1982. Estimated Pollution Loading From Norwegian Fish Farms. I. Investigations 1978–1979. Aquaculture 28:347–361). Catfish ponds, for instance, release effluents containing high concentrations of nutrients, often at concentrations exceeding water quality limits set by EPA and state governments. (Tucker, C.S. 1996. The Ecology of Channel Catfish Culture Ponds in Northwest Mississippi. Reviews in Fisheries Science 4(1):1–55). EPA invites commenters to identify and submit additional data to support or refute these conclusions.

3. What Changes Is EPA Proposing To Make to the CAFO and CAAPFs Jurisdictional Regulations?

As stated previously, currently only the ''Director'' may designate these sources as subject to the NPDES program on a case-by-case basis and ''Director'' is defined as the EPA Regional Administrator or the State Director, as the context requires. 40 CFR 122.2. EPA foresees the need to make

future designations itself in authorized States in particular circumstances, although the Agency has only done so on occasion. Therefore, EPA is proposing to revise 40 CFR 122.23 and 122.24 to include explicit language describing that the Agency has the authority (under certain circumstances discussed below) to make such designations in instances when the State has not already done so.

i. When Would EPA Designate These Sources?

The proposed regulatory change would limit the exercise of this discretion to the situation when EPA establishes a TMDL for a waterbody in an authorized State and determines that designation is necessary to provide reasonable assurance that the wasteload allocations and load allocations under the TMDL will be achieved. By restricting the exercise of its discretion to this high priority circumstance, the Agency recognizes its own resource limitations, as well as the special role of authorized NPDES States in the federal system.

States must submit each TMDL they establish to EPA for approval. Elsewhere in today's **Federal Register**, EPA proposes regulations to require States to submit a plan to implement the load allocations and wasteload allocations of a TMDL as a component of the TMDL. EPA would evaluate the adequacy of the implementation plan (a required element of a TMDL) in determining whether to approve a TMDL. If EPA disapproves a TMDL based on a determination that the implementation plan is inadequate, EPA would establish the TMDL itself, including an implementation plan.

One of the proposed required elements of the implementation plan is that it contain reasonable assurance that the control actions and/or management measures required to implement the load allocations and the wasteload allocations established by the TMDL will be put in place and the load allocations and wasteload allocations will be met. Thus, EPA may disapprove the TMDL if it determines that the implementation plan lacks reasonable assurances. For example, EPA may determine that the implementation plan lacks reasonable assurances that certain animal feeding operations will achieve and maintain their respective pollutant load allocations. If working with the State to achieve reasonable assurance has failed, EPA would disapprove the TMDL and would be required to establish a TMDL, including an implementation plan. EPA may then determine that some animal feeding operations are significant contributors of pollutants to waters of the United States and that the best way for EPA to provide reasonable assurance that such an animal feeding operation achieves and maintains its assigned pollutant load allocation is through the issuance (and enforcement) of an NPDES permit. Under today's proposal, EPA could then invoke its designation authority and subject the animal feeding operation to the NPDES program. In similar circumstances, EPA could designate an unregulated aquatic animal production facility. The language in today's proposal about the Agency's intention and authority to designate unregulated animal production sources in authorized States—where EPA establishes a TMDL—supports the fulfillment of the CWA goals to attain and maintain water quality standards. The proposal also supports EPA's backstop authority, as specified in CWA section 303(d)(2), to establish TMDLs (including all required elements) for waterbodies for which the State fails to do so.

ii. How Would This Proposal Affect States?

The proposed regulation limits the exercise of this discretionary authority to situations where EPA establishes a TMDL. Many States have opportunities to provide ''reasonable assurances'' to control nonpoint source pollutants and/or pollution in ways (and based on authorities) that are not available to the federal EPA. When EPA establishes a TMDL, the federal authority to designate otherwise unregulated sources as point sources would provide a federally enforceable ''reasonable assurance'' that the allocation would be achieved. The Agency stresses that the authority proposed today would be used only in those circumstances where other means of working with the State have failed.

iii. Who Would Issue Permits to These Sources Once Designated?

EPA does not have authority to issue permits to the animal production facilities that the Agency designates for regulation in a State authorized to administer the NPDES program. That authority remains exclusively with the authorized State. CWA section 402(c). Instead, EPA relies on its authority to designate point sources under the CWA in general and the specific authority provided by CWA section 501(a) to support the Agency's authority to designate point sources subject to regulation under the NPDES program, even in States authorized to administer the NPDES permit program. The interpretive authority to define point sources and nonpoint sources was recognized by the D.C. Circuit in *NRDC* v. *Costle*, 568 F.2d 1369, 1377 (D.C. Cir. 1977). This interpretive authority arises from CWA section 501(a) when EPA interprets the term ''point source'' at CWA section 502(14).

4. How Would EPA Revise the Regulatory Text?

EPA recognizes that many State agencies have limited resources to implement their NPDES programs and in many cases, a State's inaction in the designation of additional sources is not a result of an authorized State's unwillingness to assert regulatory authority over additional sources, but rather the perceived inability to assure timely issuance of individual permits for these sources in the face of competing priorities. Given increased reliance and success in control of point sources under State NPDES general permits, however, the Agency believes that EPA designation in these jurisdictions and in these instances will expedite the attainment of water quality standards without undue burden on authorized States.

In order to achieve this result, EPA is proposing to modify 40 CFR 122.23(c)(1), (3) and (4) and 40 CFR 122.24(c)(1)–(3) as reflected in proposed regulatory text. These modifications would specify that, in jurisdictions where EPA is not the NPDES permitting authority, EPA could (under certain circumstances) designate an animal feeding operation as a ''concentrated animal feeding operation'' where the Regional Administrator or his/her delegee makes a determination that the operation is a significant contributor of pollutants to waters of the United States. Similarly, today's proposal would accomplish the same objective for the designation of an aquatic animal production facility as a ''concentrated'' aquatic animal production facility (i.e., the aquatic form of a concentrated animal feeding operation). These modifications would also specify that EPA would only designate these facilities where pollutants are discharged into waters for which EPA establishes a TMDL to provide reasonable assurance that the wasteload allocations and load allocations under the TMDL will be achieved.

The Agency invites comments on this proposal, including the limitation of the federal designation authority (in authorized States) to discharges to waters for which EPA establishes a TMDL.

B. How Would Silvicultural Activities Be Affected by Today's Proposal?

1. Which Sources Are Currently Excluded From the Definition of a ''Point Source?'

EPA is today proposing to modify its current interpretation of the term ''point source'' with respect to discharges associated with silviculture. The term ''point source'' is defined in regulations at 40 CFR 122.3 to exclude certain discharges from NPDES requirements. Section 122.3(e) specifically excludes ''Any introduction of pollutants from nonpoint source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands and forest lands.'' As a preliminary matter, the Agency notes that, though the regulatory exclusions have existed since the 1970's, Congress did not enact the specific statutory ratification for the agricultural exclusions, for ''return flows from irrigated agriculture'' and ''agricultural storm water'' until 1977 and 1987, respectively. Neither of the 1977 nor the 1987 amendments provided any ratification of the silvicultural exclusions.

Since that time, the Agency and the States have begun the implementation of regulatory controls on intermittent ''wet weather'' sources. In 1987, Congress directed EPA to focus on water quality concerns associated with storm water. One of the types of storm water discharges that the Agency identified as appropriate for regulatory control under the NPDES program was storm water discharges associated with construction activity, including clearing, grading, and excavation activities. See 40 CFR 122.26(b)(14)(x). Storm water discharges resulting from land disturbance have significant potential for water quality impairment due for example, to excessive sediment loads. Sediment adversely affects aquatic ecosystems by reducing light penetration, impeding sight-feeding, smothering benthic organisms, abrading gills and other sensitive structures, reducing habitat by clogging interstitial spaces within a streambed, and reducing the intergravel dissolved oxygen by reducing the permeability of the bed material. (Everest, F.H., Beschta, J.C., Scrivener, K.V., Koski, J.R., Sedell, J.R., and C.J. Cederholm. 1987. Fine Sediment and Salmonid Production: A Paradox *Streamside Management: Forestry and Fishery Interactions,* Contract No. 57, Institute of Forest Resources, University of Washington, Seattle, WA. pp. 98–142).

To date, NPDES regulation of storm water discharges associated with construction activity has protected water quality from the runoff associated with for example, the construction of roads. A gap in regulatory coverage exists, however, in that the existing NPDES regulations categorically exclude silviculutral road construction and maintenance from the definition of ''point source.'' 40 CFR 122.27(b). Therefore, the silviculture regulation excludes discharges from forest roads from the universe of sources that can be regulated under the NPDES permitting program.

2. Are All Discharges From Silivicultural Activities Currently Excluded From the NPDES Program?

Not all discharges from silvicultural activities are currently excluded from the definition of a ''point source.'' EPA regulations at 40 CFR 122.27(b)(1) specify which discharges associated with silvicultural activities are point source discharges, namely, discharges from rock crushing, gravel washing, log sorting and log storage facilities. Discharges from these activities are categorically subject to regulation under the NPDES program. EPA regulations at 40 CFR 122.27(b)(1) also currently identify certain discharges associated with silviculture activities that may be ''nonpoint source'' discharges, thus, not subject to NPDES permits. These include runoff from nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance. Currently, runoff from these activities is categorically excluded from the NPDES program. Also, as noted in the regulation, some discharges associated with silvicultural activities (such as stream crossing for roads) may involve point source discharges of dredged and fill material. In these cases, a CWA section 404 permit may be required. See 33 CFR 209.120 and part 233.

EPA acknowledges that CWA section 404(f)(1) exempts certain discharges of dredged or fill material from CWA permitting requirements for, among other activities, normal silvicultural activities and the construction or maintenance of forest roads. The CWA section 404(f) exemption for discharges of dredged and fill material applies to permit requirements under both section 404 and section 402, except as provided in section 404(f)(2). Section 402, however, does not regulate discharges of dredged or fill material. EPA has consistently interpreted the apparent inconsistency of including section 402 in the section 404(f) ''exemptions'' to reflect the intent that discharges of dredged or fill material that are exempt from section 404 permit requirements would not be regulated under section 402 instead. EPA has not interpreted the inclusion of section 402 in section 404(f) to mean that discharges other than dredged or fill material (from the activities listed in section 404(f)) are exempt from permit requirements under section 402. Today's proposal would not address dredged or fill material or otherwise affect the section 404(f) exemption. Today's proposal would apply to discharges of pollutants other than dredged or fill material, for example, from contaminated storm water discharges.

EPA also notes that the section 404(f) exemption for discharges of dredged or fill material associated with the construction or maintenance of forest roads is dependent on case-by-case application of best management practices. Best management practices provide effective mechanisms to address potential adverse impacts to aquatic resources, including degradation of physical, chemical, and biological characteristics.

3. Which Silivicultural Discharges Would Be Designated Under Today's Proposal as Sources Subject to the NPDES Program?

By today's action, the Agency proposes to remove the regulatory gap in coverage with respect to those silvicultural discharges that are currently identified as a discrete category of ''non-point sources'' excluded from the opportunity for regulation under the NPDES permitting program. The only silvicultural discharges, however, that would be subject to regulation under the NPDES program on a categorical basis are those that are currently regulated as categories today: rock crushing; gravel washing, log sorting, and log storage facilities. For the sources that were categorically excluded previously (nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance), the categorical exclusion from the definition of ''point source'' would be removed. Instead, on a case-by-case basis, selected sources could be designated for regulation under the NPDES program for storm water discharges under 40 CFR 122.26(a)(v). This case-by-case designation, made by the Director or EPA, would be based upon a determination that the source contributes to a violation of water

quality standards or is a significant contributor of pollutants to waters of the United States. To make this determination the Director could consider the following factors: (1) The location of the discharge with respect to waters of the United States; (2) the size of the discharge; (3) the quantity and nature of the pollutants discharged to waters of the United States; and (4) other relevant factors. 40 CFR 122.26(a)(v).

4. Why Is EPA Proposing To Remove the Regulatory Exclusion for These Silvicultural Discharges?

Silviculture contributes approximately 3 to 9 percent of nonpoint source pollution to the Nation's waters. (Neary, D.G., and J.L. Michaele, 1989, Effect of sulfometuron methyl on ground water and stream quality in coastal plain forest watersheds. Water Resources Bulletin. 25(3):617–623). Twenty-three States have identified silviculture as a problem source contributing to nonpoint source pollution in their 1996 water quality assessments submitted to EPA under CWA section 305(b). (USEPA, 1996, EPA–841–R–97–008 April 1998).

Several types of silvicultural activities that are currently exempt from NPDES regulation may cause significant adverse impacts on water quality. These include, but are not limited to, road construction and maintenance, site preparation, prescribed burning, clearcutting, and harvesting operations. As mentioned above, the construction and maintenance of roads, other than those constructed for silvicultural operations, are currently subject to NPDES requirements. The construction and maintenance of roads related to silvicultural activities, however, is exempt. Studies demonstrate that some such road construction may create significant water quality problems. Results of a study on forest management activities in a small watershed indicated that suspended sediment yields increased almost 8 fold in the first year following road construction, and two-fold following logging in the second year. (B. Anderson and D.F. Potts, 1987, Suspended Sediment and Turbidity Following Road Construction and Logging in Western Montana, Water Resources Bulletin, Vol. 23, No. 4).

Mechanical site preparation by large tractors that shear, disk, drum-chop, or root-rake a site may result in considerable soil disturbance over large areas and has a high potential to deteriorate water quality. (Beasley, R.S. 1979. Intensive site preparation and sediment loss on steep watersheds in the Gulf Coastal plain. Soil Science Society of America Journal. 43(3):412–416). Site preparation techniques that result in the removal of vegetation and litter cover, soil compaction, exposure or disturbance of the mineral soil, and increased stormflows due to decreased infiltration and percolation, all can contribute to increases in stream sediment loads. (Golden, M.S., C.L. Tuttle, J.S. Kush, and J.M. Bradley, 1984, Forestry activities and water quality in Alabama: Effects, recommended practices, and an erosion-classified system. Auburn University, Agricultural Experiment Station. Bulletin 555). Prescribed burning is another method used to prepare sites that may also have effects on water quality as a result of increased erosion and the altering of soil properties. *Id*.

The actual harvesting of timber can also contribute to water quality problems. Results from studies have indicated that clearcutting, which is often a method used for timber harvesting, can have significant effects on the nutrient levels and temperatures of nearby waters. The resulting impacts of a logging operation in the Bull Rull Watershed of Oregon include increased nitrate-nitrogen levels for up to 7 years after the harvest and an increase in annual stream temperatures by 2–3 degrees Celsius for the following 3 years after the harvest. (Harr, R.D., and R.L. Fredriksen. 1988. Water quality after logging small watersheds within the Bull Run Watershed, Oregon. Water Resources Bulletin. 24(5):1103–1111). EPA invites commenters to identify and submit additional data to support or refute these conclusions.

5. When Would Silviculutral Sources Be Required To Obtain an NPDES Permit?

The effect of today's proposed elimination of the categorical silviculture exclusion would be limited. The currently unregulated silvicultural sources would only be required to obtain NPDES permit authorization (1) upon a case-by-case designation by EPA or the authorized State and (2) for the purposes of EPA designation, only for sources that discharge to waters for which EPA establishes a TMDL to ensure that the wasteload allocations and load allocations under the TMDL are achieved. The existing regulations for storm water associated with industrial activity (also known as ''Phase I'' storm water regulations) issued pursuant to CWA section 402(p)(4)(A), would not apply to the discharges that would become subject to regulation by the revision to 40 CFR 122.27(b). For example, storm water discharges associated with construction and maintenance of forest roads would not be considered ''storm water discharges associated with industrial activity'' under 40 CFR 122.26(b)(14). The construction of silviculture roads would not be a category of storm water discharge that is automatically subject to NPDES permitting like other kinds of road building. Instead, point source discharges of storm water associated with currently unregulated silviculture would only be designated for regulation on a case-by-case basis pursuant to CWA section 402(p)(2)(E) or 402(p)(6).

As noted above, EPA proposes that any final rule would limit EPA designation of silviculture point sources to discharges to waters for which EPA establishes a TMDL because, as a result of proposals elsewhere in today's rule, these circumstances would provide a considered and focused basis for regulation. The limitation on federal designation would apply both in authorized States, as well as in States where EPA administers the NPDES program. Given the Agency's limited resources, as well as the potentially huge universe of silvicultural sources that could become subject to NPDES permitting, today's rule focuses those limited EPA resources on these priority waterbodies. In States where EPA administers the NPDES program, the Agency does not propose silviculture point source designation authority to the same extent as would be available to authorized States. Unlike authorized States that might designate silviculture point sources outside of the TMDL context, EPA would only designate a source when the Agency establishes a TMDL itself to ensure that the wasteload allocations and load allocations under the TMDL are achieved. In addition, EPA would work with and assist those States (where EPA administers the NPDES program) in development of their nonpoint source control programs (so that the State could provide its own reasonable assurances), rather than federally designating silviculture point sources prior to that State's establishment of its TMDLs. As noted above, EPA does not propose to limit designation by authorized States, who may have other opportunities to assure ''reasonable assurances'' that nonpoint sources attain load allocations under TMDLs. Additionally, CWA section 510 preserves more expansive designation authority for States.

EPA expects that only in extremely rare circumstances would the Agency need to exercise its authority to establish an NPDES permit requirement for discharges associated with silvicultural activities. Indeed, enhanced implementation of State programs and authorities designed to

protect water quality from silvicultural activities may be strong enough, in the aggregate, to satisfy ''reasonable assurance'' that silvicultural sources would attain load allocations under TMDLs through State means alone. EPA would only use the proposed new designation authority as a ''last resort'' because EPA lacks authority to regulate silvicultural sources directly through other means than through the NPDES permitting program. As noted above, States might choose to use the new authority more broadly, but EPA would encourage them to focus their limited regulatory resources in the same limited manner that EPA would use it.

6. How Would States Be Affected by This Proposal?

State capacity to address silvicultural sources is exemplified by the breadth and depth of State programs. A significant number of States have comprehensive forest practice management acts, while most others have at least some sort of backup authority, such as enforceable water quality standards or ''bad actor'' laws. At least ten States administer regulatory programs that are as comprehensive as EPA anticipates would be imposed if sources were designated under today's proposal for regulation under the NPDES permitting program. (Olafson, PV, Cheng A.S., and R.D. Moulton. 1995. Regulation of Private Forestry Practices by State Governments. University of Minnesota, Minnesota Agricultural Experiment Station. Bulletin 605). Nearly all States have developed and published BMPs for silviculture, about half of the States conduct annual compliance audits to determine landowner use of BMPs, and in most States, the State forestry agency plays a role in the State nonpoint source plan. (Stuart, Gordon W., 1996. The National Association of State Foresters 1996 Progress Report, State Nonpoint Source Pollution Control Programs for Silviculture. National Association of State Foresters).

In general, EPA envisions that permits for silvicultural activities would be based on an approach emphasizing the development of pollution prevention plans and/or specification of best management practices rather than quantitative discharge limits for specific pollutants. EPA would work with States and stakeholders in developing these permits.

EPA invites comments on removing the categorical exemption for runoff from certain sivicultural activities and on its intention to limit federal designation authority to discharges into waters for which EPA establishes a TMDL.

IV. Proposed EPA Authority To Reissue State-Issued Expired and Administratively-Continued NPDES Permits

Under the NPDES program regulations, a Regional Administrator may review and object to State-issued NPDES permits. The procedures by which a Regional Administrator may review and object to these permits are found in 40 CFR 123.44. The existing objection authority, under section 402(d) of the Act, grants EPA 90 days within which to object to a proposed State permit that fails to meet the guidelines and requirements of the Act. If a State fails to respond to an EPA objection within 90 days of objection, exclusive authority to issue the NPDES permit to that discharger passes to EPA.

A. Can EPA Object to State-Issued Expired and Administratively-Continued Permits?

Today's proposal describes a new mechanism by which a Regional Administrator may trigger the existing review and objection procedures in 40 CFR 123.44 for State-issued NPDES permits. EPA is proposing to grant the Regional Administrator the discretion to trigger these procedures when a State fails to revise an expired, State-issued permit that has been administratively-continued for more than 90 days. This authority could be triggered when the expired permit authorizes a discharge to an impaired waterbody where there is a need for a change in the existing permit limits (referred to as an ''environmentally-significant permit''). The Agency's NPDES regulations require that an existing permittee submit a new permit application at least 180 days before an existing permit expires. 40 CFR 122.21(d)(2). When a permittee has submitted a timely application for renewal, but the State Director fails to act on the permittees' application before the existing permit expires, State law often provides that the existing permit continues in effect by operation of law. The permit remains in effect by operation of law until the State takes final action on the permittee's application—that is, until the State makes a final decision to grant or deny a new permit. This is often referred to as administrative continuance. These State laws, like the corresponding provisions in 40 CFR 122.6 and the federal Administrative Procedure Act, 5 U.S.C. 558(c), aim to protect a permittee who has submitted a timely application for renewal. State law protects a permittee from losing its authorization to discharge simply because the permit-issuing authority has not issued a new permit before the existing permit expires.

Administrative continuance may provide States the necessary flexibility without significant adverse impacts on the NPDES permitting scheme. However, it may also lead to inappropriate delays in reissuing permits that need revision in order to remain in compliance with applicable requirements. State administrative-continuance laws typically allow an expired permit to remain administratively-continued indefinitely. Therefore, a lengthy administrative continuance of a permit for a discharge into an impaired water can greatly delay the implementation of needed water quality-based effluent limitations, including effluent limitations implementing wasteload allocations established in a TMDL for an impaired waterbody. Under EPA's existing regulations, no mechanism currently exists by which to invoke the Agency's permit veto authority to address this situation. Today's proposal would provide that needed procedural mechanism.

This proposed provision is designed to address a subset of expired and administratively-continued permits. EPA uses the term backlog to describe the larger set of permits that are either expired and administratively-continued or have not yet been issued to first time applicants. Notwithstanding the Agency's own permit backlog, EPA recognizes that many expired permits for discharges into impaired waters have not been reissued and expects to exercise this discretion in very rare instances involving environmentally-significant permits. The Agency intends to use its discretion under the proposed provision as one way to help ensure that these permits will be issued in a timely manner.

B. How Would EPA Review and Object to a State-Issued Expired and Administratively-Continued Permit?

Today's proposal provides that, if the State failed to submit to EPA a draft or proposed permit for a discharge into an impaired waterbody within 90 days following the permit expiration date, the Regional Administrator would be able to treat the expired and administratively-continued permit as equivalent to the State's submission of a draft or proposed permit for EPA review under 40 CFR 123.44. For EPA to trigger this discretionary review mechanism, EPA would give the State and the discharger 90-days notice of its intent to do so. EPA could provide this notice at any time

following the 90-day period after permit expiration. The use of this new mechanism would be discretionary on the part of EPA. Like a veto of a proposed permit under the existing 40 CFR 123.44, this would not constitute final agency action until EPA had completed the permit issuance process under 40 CFR part 124 and issued or denied the permit. *District of Columbia* v. *Schramm,* 631 F.2d 854, 816 (D.C. Cir. 1980); *Mianus River Preservation Comm.* v. *Administrator, EPA,* 541 F.2d 899, 909 n.24 (2nd Cir. 1976) (discretion). *Champion Intl Corp.* v. *U.S. EPA,* 850 F.2d 182, 187 (4th Cir. 1988) (reviewability).

EPA believes that the 90 days provided after permit expiration, plus the 90 days provided after notice by the Agency that it intends to trigger Agency review, plus the 90 days provided for a State to respond to Agency objection would provide enough time for a State to reissue an expired permit. EPA notes that under the proposed mechanism, the Agency would effectively have the authority to extend the period of time for the State to reissue a permit beyond the 270 days effectively provided under the proposed regulation. This would occur by delaying the date upon which the Agency notifies the State of its intent to trigger Agency review. Nonetheless, the Agency invites comment on whether EPA should provide a grace period of longer than 90 days after the permit expires and is administratively-continued before the Agency may provide notice that it intends to trigger Agency review.

C. When Would EPA Withdraw its Objection?

Once the environmentally-significant, administratively-continued permit is subject to review under 40 CFR 123.44 procedures, EPA would be able to comment on, object to, or recommend changes to the permit. If the State, under 40 CFR 123.44(a), submitted a draft or proposed permit for EPA review at any time before exclusive authority to issue the permit passes to EPA under 40 CFR 123.44(h), EPA would withdraw its notice of intent to assume permit authority. At this point, existing rules on EPA objection to State-issued permits would govern. Therefore, EPA may take any appropriate action, including transmission of comments on or possible objection to the new draft or proposed permit submitted by the State. Furthermore, the ability to invoke this authority would continue until the State issues the final permit. In other words, if a State submits a draft or proposed permit that EPA believes resolves all of the concerns under the objection, but fails to issue the final permit, EPA may in fact, invoke this authority again and object to the original (expired and administratively-continued) permit.

D. When Could EPA Invoke This Authority?

Proposed 40 CFR 123.44(k) describes two situations in which EPA would be able to treat an expired and environmentally-significant, administratively-continued permit as the State's submission of a permit for EPA review under 40 CFR 123.44. This authority could be invoked if the discharge is subject to a TMDL, established or approved by EPA, and the expired permit does not incorporate the relevant wasteload allocations established in the TMDL. Second, this authority could be invoked if the permit authorizes a discharge of a pollutant(s) of concern (a pollutant(s) for which the waterbody is impaired) to a waterbody that does not meet water quality standards and for which EPA has not established or approved a TMDL.

EPA is considering providing explicit language describing that this authority is available to the Agency with respect to all expired and administratively continued permits which are not consistent with new CWA provisions. Examples of such permits, other than those covered by today's proposal, would be permits that do not reflect newly-adopted water quality standards and effluent limitations guidelines. EPA invites comment on these and other circumstances in which it would be appropriate for EPA to assert this authority.

E. Would EPA Work With the State Before Invoking This Authority?

The Agency stresses that the new review mechanism proposed today would be used only in those circumstances where other means of working with the State to reissue the permit have failed. The Agency may invoke this authority where leaving the administratively-continued permit in place would frustrate the attainment of water quality standards in impaired waterbodies prior to the establishment of a TMDL. The Agency may also invoke this authority in instances where leaving the administratively-continued permit in place would frustrate the implementation of a TMDL. Leaving the administratively-continued permit in place in both of these instances would be inconsistent with the goals and purposes of the Act. At any time during this process, the State is encouraged to explain to EPA the reasons for its failure to reissue the expired permit. The Agency will carefully consider any such explanation before proceeding with these objection procedures. Similarly, the Agency would not expect to depend heavily upon the proposed mechanism in States whose administrative continuance laws operate for periods of time not much in excess of the 270 days effectively provided for reissuance by this proposal.

F. What If a Permit Has Expired but the Permittee Has Not Submitted a Timely and Complete Application for Renewal to the State?

EPA also notes that proposed 40 CFR 123.44(k) would apply only to those expired, State-issued permits for which a timely and complete application for renewal has been submitted to the State, and for which State law has provided for continuation of the expired permit. The new provision would not apply to unpermitted discharges or discharges of new sources or new dischargers that may or may not have filed a permit application. In these cases, existing authority allows the Agency to institute judicial or administrative actions against these dischargers for discharging without a permit, even if they have submitted an application to the State and the State has not issued the permit.

G. What Authority Supports Today's Proposed Changes?

Section 402(d) of the Act provides EPA with authority to object to and veto a proposed permit that violates the requirements of the Act. As discussed below, neither the Act nor its legislative history expressly speaks to the issue of whether the Agency may object to and veto permits that have effectively changed under administrative continuance. When Congress has not spoken directly to an issue of statutory construction, courts recognize agency discretion to reasonably interpret a statute that the Agency is charged to administer. *Chevron* v. *Natural Resources Defense Council,* 467 U.S. 837 (1984). Therefore, the Agency has long held that, based on the congressional purpose underlying CWA section 402(d), the Agency's objection and veto authority exists not only when a permit has been formally proposed and submitted to the Agency for review but also when a State or a court has taken action to change a permit such that it requires new review by the Administrator. Memorandum of July 18, 1973 from Robert V. Zener, Acting Deputy General Counsel, to Dale S. Bryson, Acting Director Enforcement Division, Region V, regarding Extent of EPA Concurrence on NPDES Permits; Memorandum of July 3, 1975 from Robert V. Zener, General Counsel, to

James O. McDonald, Director, Enforcement Division, Region V, regarding US EPA Authority to Review State Permit Modifications. Similarly, the Agency has concluded that administrative continuance of an expired permit in the face of newly established wasteload allocations or an impairment listing may constitute a circumstance where a new review by the Administrator is warranted.

EPA's authority to promulgate the proposed revision to 40 CFR 123.44 is a reasonable interpretation of several statutory provisions. The authority stems primarily from EPA's responsibility to ensure that permits include water quality-based effluent limitations as necessary to meet water quality standards. This is especially important in waters where TMDLs and wasteload allocations have been established to meet applicable water quality standards. Section 303(d) of the Act requires EPA to ensure that a TMDL is established for impaired waters. The wasteload allocations derived from the TMDL indicate the water quality-based effluent limitations that permittees discharging to the impaired water must meet for the waterbody to meet applicable water quality standards. Section 301(b)(1)(C) of the Act directs EPA and the States to include water quality-based effluent limitations in NPDES permits that will enable the waterbody to meet the applicable water quality standards.

Listing a water under CWA section 303(d) and the subsequent establishment of a TMDL, may indicate that new or more stringent water quality-based effluent limitations are necessary for point source discharges to that waterbody. If so, a lengthy administrative continuance of the permit may interfere with the Administrator's responsibility to ensure that permits are consistent with the requirements of the CWA. The Administrator bears a statutory responsibility under CWA section 303(d) to ensure timely establishment of TMDLs and an obligation under CWA section 301(b)(1)(C) to ensure that permits include water quality-based effluent limits as necessary to meet water quality standards. CWA section 501(a) allows the Agency to promulgate a regulation that relies upon EPA's authority in CWA section 402(d), to prevent a State from avoiding or postponing by lengthy administrative-continuance, what otherwise would be required by reissuance. The Agency also bears an obligation under CWA section 402(c)(2) of the Act to ensure that State programs and State-issued permits comply with the requirements of the Act. NPDES permits may not be issued for period exceeding five years (CWA section 401(b)(1)) and should be reviewed and revised in a timely fashion to ensure compliance with the CWA and applicable regulations. It would be difficult for the Agency to fully discharge its duty under CWA section 402(c)(2) to ensure that States not violate the requirements of CWA section 402(b)(1) if the only statutorily-authorized remedy were program withdrawal. Therefore, Congress provided EPA the objection and veto authority found in CWA section 402(d). EPA believes that it must be able to invoke this authority as provided in the proposed 40 CFR 123.44(k) to implement the goals of the CWA and the requirements of CWA section 402(b).

EPA also believes that today's proposal is consistent with the purpose of CWA section 402(d). The Agency's objection and veto authority, under CWA section 402(d), is necessary to correct program and permit inadequacies before they have become so systemic that program withdrawal is justified. The Agency should reserve withdrawal authority for gross inadequacies in a State program. This distinction was recognized by Representative Reuss, then chairman of the House Conservation and Natural Resources Subcommittee, who explained that:

> * * * Federal takeover should not be necessary when EPA finds that only a few of the permit applications are being ''improperly'' issued. Such total takeover would result in chaos both at the State and Federal level. It should be exercised with great care and only when there is clear evidence that the entire State program has fallen into disrepair.

118 Cong. Rec. 10,240 (1972). Accordingly, he argued that the Agency required the authority in CWA § 402(d) to ensure uniform implementation of the Act's requirements in individual permits:

> The EPA Administrator should not have to veto a State's total program just to get at permits granted improperly to a couple of polluters. So we still need a veto on individual permits to check those that are improperly granted, and this concept is already embodied for interstate waters in section 402 (d) (2) of the House bill.

Id. EPA's interpretation of the veto authority conferred in section 402(d) is consistent with the explanation of the relationship between sections 402(d) and 402(c) as articulated in these floor statements. Without the authority to object to expired permits on impaired waters, EPA's only recourse is program withdrawal. EPA believes this is clearly inconsistent with the intent of CWA section 402(d).

Also, it would make little sense for Congress to have left the Agency without discretion under CWA section 402(d) to address, at the time of permit expiration, the problem of lengthy administrative extension. EPA could have addressed the problem by objecting to and vetoing the permit at the time it was initially proposed had the Agency known then that the permit would be administratively extended for an unreasonable length of time. EPA believes that, instead, the statute can reasonably be read under *Chevron* to allow States to issue 5-year permits and provide for administrative continuance without an initial EPA objection or veto by preserving the Agency's objection and veto authority to ensure that the use of administrative continuance is consistent with the statutory scheme that underlies section 303(d) of the Act.

H. Conclusion

It is important to note that the Agency is not here considering imposing newly formulated water quality-based effluent limitations during the term of the existing permit. Nor would the proposed change interfere with the proper operation of State administrative continuance laws. The Agency would exercise its discretion to veto an administratively-continued permit when the Agency perceives a need to issue a permit that reflects water quality-based effluent limitations necessary for the water to achieve applicable water quality standards. But the permit would remain administratively-continued until the Agency or the State issued a new permit (with the wasteload allocation incorporated). In no instance would a permittee go without authorization to discharge simply for failure of the State to take action on the permittees timely application for renewal. The Agency invites comment on other statutorily-authorized mechanisms by which the Agency might address expired and administratively-continued permits for sources discharging to impaired waterbodies. EPA also requests comment on whether it should limit the exercise of this authority to impaired waters for which a TMDL has not been developed and approved and to waters for which a TMDL has been approved and a change to the administratively-continued permit is necessary to implement a WLA in the approved TMDL.

EPA recognizes that State agencies have limited resources to implement their NPDES programs and often expired, administratively-continued

permits are not a result of State unwillingness to reissue permits. EPA recognizes that a State may be unable to reissue permits because of competing priorities. EPA faces similar resource constraints when it issues permits. The Agency also recognizes the State's role as primary implementers of the NPDES program. The Agency, after carefully weighing these considerations with the risks associated with allowing critical permits to remain unrevised, has concluded that the proposal of this provision is appropriate.

V. Regulatory Assessment Requirements

A. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act, generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Administrator certifies that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities for the reasons explained below. Consequently, EPA has not prepared a regulatory flexibility analysis.

The first of today's proposed new provisions would amend EPA's water quality standards regulations to require that States adopt and implement antidegradation policies that ensure new and significantly expanding dischargers who are large entities on impaired waterbodies offset their discharges by more than a 1.5:1 ratio. (The proposal would also amend the NPDES regulations to prohibit EPA from issuing an NDPES permit unless the discharger complies with applicable antidegradation requirements that are to include provisions requiring offsets.) Because the provision would require a State (or EPA) to obtain offsets only from large entities, there is no impact on small entities.

The second provision being proposed today would extend EPA's current authority under the NPDES regulations to designate and require NPDES permits for certain presently unpermitted sources. The proposal would authorize EPA under certain conditions to require permits for animal feeding operations (AFO), aquatic animal production facilities (AAPF) or silvicultural activities. The current regulations provide that, where EPA is the permitting authority, EPA may designate an AFO or AAPF as a point source requiring an NPDES permit if the Agency determines it is a significant contributor of pollution to waters of the U.S. The proposed changes would extend this discretionary designation authority to authorize EPA action in States with approved NPDES programs but only in narrow circumstances. EPA could invoke this authority only in those instances where the Agency establishes a TMDL and designation is necessary to satisfy the reasonable assurance standard under that TMDL.

In addition, under the current regulations, most silviculture stormwater sources are exempt from NPDES regulation. Under the proposal, these stormwater sources would continue to be exempt unless and until EPA, or a State with an approved NPDES program, designated them as subject to NPDES regulation. The effect of today's proposed elimination of the categorical silviculture exclusion would be limited. The currently unregulated silvicultural sources would only be required to obtain NPDES permit authorization (1) upon a case-by-case designation by EPA or the authorized State and (2) for the purposes of EPA designation, only for sources that discharge to waters for which EPA establishes a TMDL to ensure that the wasteload allocations and load allocations under the TMDL are achieved. NPDES-authorized States, however, might choose to use the new authority more broadly, but EPA would encourage them to use it in the same limited manner that EPA would use it. In fact, EPA expects that States would exercise this authority infrequently, because many States have additional nonpoint source authorities, unavailable to EPA, to control discharges from these sources. EPA has concluded that this provision would not impose significant new costs on a substantial number of small entities.

EPA assessed the potential costs associated with the permitting of newly designated sources under several different scenarios. The results of this evaluation show that there would not be a significant impact on a substantial number of small entities if this proposal were adopted. As a first step in its evaluation, EPA identified those small entities potentially affected by the proposal. In identifying these small entities, EPA used the definitions of small businesses established by the RFA. Small governmental jurisdictions and small organizations (e.g. nonprofit organizations) are not expected to be affected by the designation provisions. Only businesses in sectors which include silviculture, animal feeding operations and aquatic animal production facilities would potentially be impacted by this limited extension of EPA's (and in the case of silviculture, State) authority to designate point sources.

There would be additional costs to small entities if EPA, following promulgation of the designation provision, were to designate a particular discharger for permitting. As noted previously, this would occur only when a State fails to submit a TMDL or submits a TMDL that EPA finds will not reasonably assure compliance with the load allocations. EPA assumes that States will make every effort to develop effective TMDLs and employ their existing programs and legal authority to ensure compliance. Currently, every State has a nonpoint source control program which in many cases includes legal authority to address those industrial sectors that are the focus of the limited designation authority (AFOs, silviculture activities and aquaculture). EPA also expects further enhancements to State point and nonpoint source control programs as the States develop their TMDLs. In these circumstances, EPA can predict with a high degree of confidence that the occasion on which it may need to exercise its proposed new designation authority will not be great. EPA, however, cannot predict specifically how often this authority may be used, or exactly how often States will use their new designation authority with respect to silviculture.

The analysis of potentially regulated silviculture entities was based on a modified sales test that compared the estimated per acre cost of compliance with per acre sales revenue. The results show that the potential costs of implementing BMPs per acre are less than 1% of sales revenues from one acre of timber. Both compliance cost based on anticipated BMPs and sales per acre were calculated regionally, to account for regional variations in timber practices and timber sales values. This analysis concluded that both logging operations and timber land owners (i.e. nurseries, etc.) are expected to experience costs of much less than 1% of sales in every scenario tested.

While EPA's exercise of the limited new proposed designation authority for silviculture, may at some point in the future, result in the imposition of these

additional costs on dischargers, including small entities, it is the Agency's view that adoption of the provisions giving EPA and the States authority to subject these sources to NPDES permitting requirements does not impose additional costs on dischargers now. Further, because the proposed authority is discretionary, it is not possible to identify which nonpoint source dischargers, if any, would be designated as point sources and required to obtain a permit. No sources would be automatically so designated. Only in the event EPA or a State acted to designate a particular discharger would there be any costs to the discharger.

In analyzing potentially regulated animal feeding operations (AFOs), EPA performed a sales test. The analysis determined that the average potential costs of permit compliance are less than 1% of most small entity sales revenue. However, this analysis was constrained by two factors. First, the sales test relied on revenue data by farm, which resulted in an underestimate of sales revenue from small operations that own more than one farm and also underestimated sales revenue from operations that receive revenue from more than one type of source (sell more than one type of item). Second, EPA used the more complete State 305(b) lists of impaired waterbodies (rather than 303(d) lists) to estimate the number of entities that might be designated under the proposed rule. Because waters listed as impaired under 305(b) may still be attaining water quality standards and thus not require a TMDL, this overestimates the number of entities used in EPA's assessment. AFOs located on waterbodies that do attain standards are not affected by today's proposal. Taking into account these constraints, EPA's best estimate is that very few small entities (less than 100 annually) would experience impacts greater than one percent of sales revenue, and even fewer will experience impacts of greater than three percent of sales revenue as a result of being designated. Therefore, EPA's evaluation shows that there would not be a significant impact on a substantial number of small AFOs.

The analysis of potentially regulated Aquatic Animal Production Facilities (AAPFs) indicates that very few are located on impaired waterbodies. EPA estimates that only two to ten operations could potentially be designated annually. If these entities are designated however, a sales test indicates that a few small entities may experience permit compliance costs of approximately 4% of sales revenue. Since so few AAPFs discharge to impaired waterbodies, EPA's evaluation shows that there would not be a significant impact to a substantial number of small AAPFs.

In the case of animal feeding operations and aquatic projects, the proposed authority merely would backstop existing State authority under the Clean Water Act. Thus, EPA designation authority would not impose any new costs on nonpoint source dischargers potentially subject to designation because any costs to the potentially designated sources that would result if EPA exercised its designation authority are the same costs that would result if the State exercised its designation authority under existing State and Federal laws and regulations. Thus, the costs to animal feeding and aquatic projects would be the same whether the State or EPA designated the source as subject to NPDES.

Moreover, when and how often EPA might exercise the proposed authority is unpredictable for several reasons. First, the proposal would authorize EPA action in only a limited set of circumstances: (1) Where a State has either failed to submit a TMDL (or submitted a deficient TMDL); (2) EPA has established a TMDL for the water body; and (3) EPA determines that the nonpoint source is a significant contributor of pollution and that designation (and permitting) of the source are needed to ensure that load and waste load allocation are met. EPA cannot predict when it may be required to establish TMDLs. However, the Agency's expectations are that States with approved NPDES programs will be submitting approvable TMDLs with load and waste load allocations that will reflect achievement of the TMDLs, and that EPA thus will need to exercise its designation authority infrequently. Because EPA does not know for which water bodies in which States it will need to establish TMDLs, it cannot predict what nonpoint source dischargers it may need to consider for designation under the proposed authority.

These intervening steps between today's proposal and any exercise of EPA's authority (if the rule were promulgated as proposed) underscore EPA's position that adoption of the designation provisions would not impose significant costs on a substantial number of small entities. Promulgation of the proposal is only one step in a series of actions that must occur before any costs are imposed on any particular nonpoint source discharger.

The third provision in the proposal would authorize EPA, in certain circumstances, to object to state-issued permits that have not been reissued following the expiration of their 5-year term. Where water quality standards (or applicable effluent limitations guidelines) change during a permit term, the permittee is generally protected during the permit term against new or more stringent permit conditions necessary to implement the new water quality standards or effluent limitations guidelines, until a new permit is issued. In most cases, permittees submit timely applications for renewal and permitting authorities reissue these permits in a timely manner. In some cases, authorized States may fail to reissue NPDES permits at the end of their 5-year term as is currently required, and the existing permits continue in effect under general principles of administrative law. (Administrative continuance protects the permittee who has submitted a timely application for renewal from being penalized for discharging without a permit.)

This proposal, if promulgated, would authorize EPA to take action to reissue an expired permit in those cases where the State failed to reissue the permit after a specified period. EPA's exercise of this authority is limited to circumstances in which a permit authorizes discharges to impaired waterbodies or the permit does not currently contain limits consistent with an applicable waste load allocation in an EPA approved or established TMDL. While EPA assumes that authorized States will expeditiously reissue permits with the required water quality-based effluent limits, where States fail to reissue such permits, EPA would use this new authority to issue such permits in a timely manner.

This provision also would not impose any additional costs on dischargers, including small entities. Because as a matter of law, the discharger's new permit, when issued, already must include any applicable new or more stringent conditions. Therefore, the effect of the proposed change is, at most, to accelerate the timing of the legally-mandated compliance with the new conditions. Consequently, EPA has concluded that adoption of a proposal to authorize future discretionary action by EPA would not result in the imposition of any new costs on small entities.

For the reasons explained herein, EPA concluded that it could properly certify the proposal. *See e.g., United States Distribution Companies* v. *FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996). (''[N]o [regulatory flexibility] analysis is necessary when an agency determines that the rule will not have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule,'' United

Distribution at 1170, quoting *Mid-Tex Elec. Co-op* v. *FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985) (emphasis added by *United Distribution* court); *see also Motor & Equip. Mrfrs. Ass'n* v. *Nichols*, 142 F.3d 449, 467 & n.18 (D.C. Cir. 1998) (the RFA imposes no obligation on an agency to conduct a small entity analysis on entities it does not regulate); *American Trucking Association, Inc.* v. *EPA*, 175 F.3d 1027 (D.C. Cir. 1999) (the RFA requires an agency to prepare a small entity impact analysis only of the effects on those entities that are subject to the requirements of a rule or directly regulated by a rule). Additional information supporting EPA's assessment is described in the administrative record supporting the proposal.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

Pursuant to terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action.'' As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal Mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The costs to State, local and tribal governments, in the aggregate, or the private sector in any one year to implement the requirements in today's proposal are not expected to exceed $65.2 million in any one year. The total cost to State, local and tribal governments is not expected to exceed $0.96 million in any one year, with a majority of these costs born by State government. The remaining $64.24 million is expected to be born by the private sector. Thus, today's proposed rule is not subject to the requirements of section 202 and 205 of UMRA.

A detailed discussion of the costs and impacts of the proposed rule, and the methodologies used to assess them, are included in the *Analysis of the Incremental Cost of Proposed Revisions to the NPDES Permit and Water Quality Standards Rules* which is available in the docket for this rule-making. While the analysis is based on the best data currently available to the agency, it necessarily includes assumptions where needed to fill data gaps. One such assumption is the percentage of large construction sites that would be required to obtain offsets under the proposed rule. Based on the percentage of waters identified in State 305(b) reports where construction activity contributed to impairment, EPA has estimated that 2–3% of large construction sites would discharge pollutants of concern to impaired waters and thus be required to obtain offsets. EPA requests comment on this assumption and any data that commenters may have that would support their comments. EPA also requests comment more generally on all of the assumptions and methodologies used in the economic analysis.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely impact small governments. As explained in the Regulatory Flexibility Act section of the preamble, this proposed rule establishes no requirements applicable to small governmental entities. Further, regulated entities are not expected to negatively impact small governmental entities. Therefore, this proposed rule will not significantly affect small governmental entities.

In addition, today's proposal will not significantly or uniquely affect Tribal governments. Currently, there are only fifteen Tribes with EPA approved or promulgated water quality standards and there are no Tribes authorized to administer the NPDES program or to establish TMDLs under section 303(d). As a result, this proposal will not significantly or uniquely affect Tribal governments. However, as Tribes continue to build their Clean Water Act capacity and establish water quality programs, more Tribes are likely to adopt water quality standards and seek approval to administer the NPDES program and establish TMDLs. If today's proposed rulemakings were to result in changes to these future Tribal water quality programs, the costs for Tribal governments would be analyzed. Moreover, whether or not Tribes choose to do so, they have a strong interest in protecting water quality on Tribal lands. Thus, even though today's proposal will not significantly or uniquely affect Tribal governments, Tribes may in the future be subject to the requirements in today's proposal. Recognizing the need to consider the views and concerns of Tribal governments in any comprehensive evaluation of how

TMDLs are established, EPA determined it was appropriate to include a Tribal representative on the TMDL FACA Committee. The committee's final report addresses Tribal issues, recommending that EPA increase efforts to educate Tribes about water quality programs, including TMDLs, and ensure that EPA and State water quality staff respect the government-to-government relationship with Tribes in all TMDL activities.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No.1920.01) and a copy may be obtained from Sandy Farmer, OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, SW; Washington, DC 20460 or by calling (202) 260–2740.

The offset provision will result in either the modification of NPDES permits, the issuance of new NPDES permits, or the issuance of an individual NPDES permit in lieu of coverage under a General Permit. The designation provisions will result in the issuance of NPDES permits (either individually or under a General Permit) to operations that would not have previously have required to obtain them. The NPDES permitting authorities, in the form of NPDES authorized States and Territories or EPA Regions in Non-NPDES authorized States and Territories, intend to use the information collected to set appropriate permit conditions, track discharges, and assess permit compliance. EPA has examined available databases and determined that these databases revealed no duplicate requirements. EPA has concluded that no government information collection activity duplicates the information requested by this and, therefore, it has no other way to obtain the information. Therefore, these responses are mandatory. In addition to the NPDES permitting authorities, EPA's Office of Wastewater Management (Office of Water), OECA, and environmental groups will most likely use the information collected to assess the regulated community's level of compliance and help evaluate the effectiveness of these provisions. Although highly unlikely, permit applications may contain confidential business information. If this is the case, the respondent may request that such information be treated as confidential. All confidential data will be handled in accordance with 40 CFR 122.7, 40 CFR part 2, and EPA's Security Manual Part III, Chapter 9, dated August 9, 1976. However, CWA section 308(b) specifically states that effluent data may not be treated as confidential.

The total projected burden associated with the information collection requirements of this proposal is estimated to be 71,996 hours annually and to impose an estimated cost of $2,415,320 annually. The annual burden to each private sector respondent for collecting information required by the rule is estimated to be: (1) An average of 23 hours per each construction respondent; (2) an average of 28.6 hours per other storm water respondent; (3) an average of 55 hours per respondent requiring process water offsets; (4) an average of 84 hours per silviculture activity that is designated; (5) an average of 47 hours per animal feeding operation that is designated; and (6) an average of 88 hours per aquatic animal production facility that is designated. The annual burden to NPDES authorized States and Territories is (1) An average of 1,040 hours per general permit issued; (2) an average of 1.5 hours to process and review each storm water NOI; (3) an average of 2 hours to process and review each submitted or updated silviculture or animal feeding operation NOI; and (4) an average of 80 hours to issue an NPDES permit to designated aquatic animal production facility. The Agency's burden is estimated to be 4,646 hours annually. These burden estimates include the time required to review the instructions, search existing data sources, gather and maintain (usually in electronic databases) all necessary data, and complete and review the information required to be collected.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Comments are requested on EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, SW; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW; Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 23, 1999, a comment to OMB is best assured of having its full effect if OMB receives it by September 22, 1999. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

E. Executive Orders on Federalism

Under Executive Order 12875, ''Enhancing the Intergovernmental Partnership,'' EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

EPA has concluded that this proposed rule will create a mandate on State governments and authorized Tribes and that the Federal government will not provide all of the funding necessary to pay the direct costs incurred by the State governments and authorized Tribes in complying with the mandate.

However, EPA has substantially increased funding for States, Territories, and authorized Tribes through the State-matched CWA section 106 and 319 grant programs. In developing this proposed rule, EPA consulted with State, local, and tribal governments to enable them to provide meaningful and timely input in the development of this rule.

Before beginning to develop today's proposal, EPA convened a Federal Advisory Committee to make recommendations for improving the efficiency and effectiveness of TMDLs. The TMDL FACA Committee was comprised of 20 members, including four senior level State officials, an elected local official, and a Tribal consortium representative. Over a period of one and one-half years, the TMDL FACA Committee held six meetings at locations throughout the country. These meetings were open to the general public, as well as representatives of State, local, and Tribal governments, and all included public comment sessions. The TMDL FACA Committee focused its deliberations on four broad issue areas: identification and listing of waterbodies; development and approval of TMDLs; EPA management and oversight; and science and tools. On July 28, 1998, the TMDL FACA Committee submitted its final report to EPA containing more than 100 consensus recommendations for changes and improvements to TMDLs. As explained throughout this preamble, EPA carefully reviewed the TMDL FACA Committee's consensus recommendations and incorporated, in whole or in part, most of those recommendations in this proposal.

Following completion of the FACA Committee process, EPA continued to meet with State and local government officials to seek their views on needed changes to the Water Quality Standards and NPDES regulations. While expressing support for many of the proposed changes being considered by EPA, State officials and their representatives also expressed general concerns about the capacity of State governments to carry out the new requirements proposed today. In particular, States were concerned about writing NPDES permits which satisfy the offset requirements, in the absence of a well established market for pollutant trading. The proposed regulation establishes some explicit requirements for States to use in establishing an offset sufficient to satisfy the offset requirements. States were also concerned about the role of EPA in reissuing State-issued expired and administratively-continued NPDES permits. EPA determined that the exercise of its authority in limited circumstances is necessary to assure reasonable further progress in impaired waterbodies prior to the establishment of a TMDL and to provide reasonable assurance that TMDLs will be implemented. In developing today's proposal, EPA considered the concerns of State and local governments and determined the need to revise the NPDES and Water Quality Standards regulations to provide opportunities for further progress toward meeting water quality standards in impaired waterbodies and to provide reasonable assurance of effective TMDL development. Today's proposal improves the effectiveness, efficiency and pace of water quality improvement and TMDL establishment.

Finally, while there is a new executive order on federalism, it will not go into effect for ninety days. In the interim, under the current E.O. 12612 on federalism, this rule does not have a substantial direct effect upon States, upon the relationship between the national government and the States, or upon the distribution of power and responsibilities among the various levels of government. The only provisions in this rule that directly affect States are those requiring States to adopt and implement antidegradation policies that ensure new and significantly expanding dischargers who are large entities on impaired waterbodies offset any proposed increases in their discharges by more than a 1.5:1 ratio. These provisions are not substantial in the context of State's overall water quality and permitting program. States already are required to have, and do have, antidegradation policies. This rule simply would require States to add one discrete provision to their existing policies. With respect to the remaining provisions, authorizing EPA to designate certain sources as point sources and to reissue expired permits where the State failed to do so, these provisions authorize EPA to act only where the State has failed to act. Accordingly, these provisions will not have a substantial direct effect on States or on intergovernmental relationships or responsibilities.

F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with these governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

As explained above in the discussion of UMRA requirements, today's rule proposal does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of Section 3(b) of Executive Order 13084 do not apply to this proposed rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

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

This rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866.

H. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), EPA is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or is otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials

specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the EPA to provide Congress, through OMB, an explanation of the reasons for not using such standards.

This proposed rule does not involve any technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and specifically, EPA invites the public to identify any potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

List of Subjects

40 CFR Part 122

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 123

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Indians-lands, Intergovernmental relations, Penalities, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 124

Environmental protection, Administrative practice and procedure, Hazardous substances, Indians-lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 131

Reporting and recordkeeping requirements, Water pollution control.

Dated: August 12, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR Parts 122, 123, 124, and 131 as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Amend § 122.2 as follows:

a. Adding the definition of ''*Existing discharger;*''

b. In the definition of ''*New discharger*,'' revising the introductory text and paragraphs (a) through (d);

c. Adding the definition of ''*Significant expansion*.''

§ 122.2 Definitions.

* * * * *

Existing discharger means any building, structure (including an outfall or a pipeline), facility, or installation:

(a) From which there is a ''discharge of pollutants'' to ''waters of the United States'' that has received or been permitted under a finally effective NPDES permit; or

(b) From which pollutants have been and are currently added to waters of the United States that has never received nor been permitted under a finally effective NPDES permit, but only if it becomes subject to NPDES permitting requirements pursuant to a regulatory designation (on an individual or categorical basis).

(c) This term includes those dischargers who move an outfall(s) within the ''same body of water.'' In determining whether an outfall is moved within the ''same body of water'' as its original location, the permitting authority should consider whether:

(1) The background concentration of the pollutant in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar at and between both outfall points;

(2) There is a direct hydrological connection between outfall points; and

(3) Water quality characteristics (e.g., temperature, pH, hardness) are similar at and between both outfall points.

* * * * *

New discharger means any building, structure (including an outfall or a pipeline), facility, or installation:

(a) From which there is or may be a ''discharge of pollutants' to ''waters of the United States;''

(b) Which has never received or been permitted under a finally effective NPDES permit; and

(c) Which is not an existing discharger.

(d) This term includes those dischargers who move an outfall(s) to another location not within the same body of water.

* * * * *

Significant expansion means a twenty percent or greater increase in loadings above the discharger's current permit limit.

* * * * *

3. In § 122.4, add new paragraph (j) to read as follows:

§ 122.4 Prohibitions (applicable to State NPDES programs, see § 123.25).

* * * * *

(j)(1) To a new discharger or existing discharger undergoing a significant expansion unless the discharger complies with the antidegradation provisions of State water quality standards applicable to such waters, including the antidegradation provisions adopted pursuant to 40 CFR 131.12(a)(1)(ii).

(2) Where a permit is issued subject to paragraph (j)(1) of this section and where the discharger is required to obtain and maintain pollutant load reductions required as offsets to meet antidegradation requirements adopted pursuant to 40 CFR 131.12(a)(1)(ii), the discharger must also comply with each of the following:

(i) The pollutant load reductions must be achieved from a source(s) of the pollutant(s) for which the waterbody is impaired and that the new or existing discharger undergoing a significant expansion is required to offset;

(ii) The pollutant load reductions must be achieved from a source(s) located on the same waterbody as the discharge from the new discharger or existing discharger undergoing a significant expansion;

(iii) The pollutant load reductions must be the result of pollutant control measures implemented by, or secured and assured by, the new discharger or existing discharger undergoing a significant expansion (credit will not be give for reductions already required for some other reason);

(iv)(A) The pollutant load reductions must be achieved on or before the date the discharge commences and remain in place until

(*1*) A TMDL for the waterbody is approved or established by EPA, and the discharger's permit reflects its wasteload allocation under the TMDL; or

(*2*) The discharger ceases to discharge the pollutant(s) causing the impairment;

(B) The Director has the discretion not to require that the pollutant load reductions be achieved on or before the date the discharge commences, but as soon thereafter as possible, in exchange for requiring the discharger to obtain pollutant load reductions by an amount of at least twice the amount of the new or expanded discharge.

(v) Where a discharger obtains pollutant load reductions from an existing point source(s), the NPDES permit(s) for the existing point source(s) must be modified to reflect those reductions on or before the date the permit is issued to the new discharger

or existing discharger undergoing a significant expansion; and

(vi) Where a discharger obtains pollutant load reductions from an existing nonpoint source(s), the discharger's permit must include any conditions, including the offset requirements and any accompanying monitoring and reporting requirements, necessary to ensure continued achievement of the pollutant load reductions from the nonpoint source(s).

(3) An explanation of the development of the requirements for the discharger to meet the criteria of paragraphs (j)(1) and (2) of this section must be included in the fact sheet or statement of basis for the permit required under 40 CFR 124.7 and 124.8.

(4) The terms ''new discharger'' and ''significant expansion'' are defined in § 122.2 of this part.

4. Amend § 122.23 to revise paragraphs (c)(1) introductory text and (c)(3) and to add new paragraph (c)(4) to read as follows:

§ 122.23 Concentrated animal feeding operations (applicable to State NPDES programs, see § 123.25).

* * * * *

(c) *Case-by-case designation of concentrated animal feeding operations.* (1) The Director, or in States with approved NPDES programs either the Director or the EPA Regional Administrator, may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to the waters of the United States. In making this designation the Director shall consider the following factors:

* * * * *

(3) A permit application shall not be required from a concentrated animal feeding operation designated under this paragraph until the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program.

(4) In States with approved NPDES programs, EPA shall only designate animal feeding operations where pollutants are discharged into waters for which EPA establishes a TMDL to ensure that wasteload allocations and load allocations under the TMDL are achieved.

5. Amend § 122.24 to revise paragraphs (c)(1) and (c)(2) introductory text and to add new paragraph (c)(3) to read as follows:

§ 122.24 Concentrated aquatic animal production facilities (applicable to State NPDES programs, see § 123.25).

* * * * *

(c) *Case-by-case designation of concentrated aquatic animal production facilities.* (1) The Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to waters of the United States. In making this designation the Director shall consider the following factors:

* * * * *

(2) A permit application shall not be required from a concentrated aquatic animal production facility designated under this paragraph until the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, has conducted on-site inspection of the facility and has determined that the facility should and could be regulated under the permit program.

(3) In States with approved NPDES programs, EPA shall only designate aquatic animal production facilities where pollutants are discharged into waters for which EPA establishes a TMDL to ensure that the wasteload allocations and load allocations under the TMDL are achieved.

6. Amend § 122.26 to revise paragraphs (a)(1)(v) and (b)(14)(x) to read as follows:

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

(a) * * *

(1) * * *

(v) A discharge which the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under paragraph (a)(2) of this section or agricultural storm water runoff which is exempted from the definition of point source at § 122.2. The Director may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Director may consider the following factors:

(A) The location of the discharge with respect to waters of the United States as defined at 40 CFR 122.2;

(B) The size of the discharge;

(C) The quantity and nature of the pollutants discharged to waters of the United States;

(D) Other relevant factors;

(E) EPA shall only designate discharges from silvicultural activities into waters for which EPA is establishing the TMDL to ensure that the wasteload allocations and load allocations under the TMDL are achieved.

* * * * *

(b) * * *

(14) * * *

(x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale (This term does not include construction activity associated with silviculture, except rock crushing, gravel washing, log sorting, and log storage facilities);

* * * * *

7. Amend § 122.27 to revise paragraph (b)(1) to read as follows:

122.27 Silvicultural activities (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) *Definitions.* (1) *Silvicultural point source* means any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the United States. This term also includes discharges composed entirely of storm water from silvicultural activities that are designated under 40 CFR 122.26(a)(1)(v) as requiring a 402 permit. Some activities (such as stream crossing for roads) may involve point source discharges of dredged and fill material which may require a CWA section 404 permit (See 33 CFR 209.120 and part 233).

* * * * *

8. Amend § 122.29 by revising paragraph (a)(3) to read as follows:

§ 122.29 New sources and new dischargers.

(a) * * *

(3) Existing discharger is defined in § 122.2;

* * * * *

9. Amend § 122.44 to revise paragraph (d) introductory text and paragraph

(d)(1) introductory text to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(d) *Water quality standards and State requirements:* any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318 and 405 of CWA necessary to:

(1) Achieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality and State antidegradation provisions.

* * * * *

PART 123—STATE PROGRAM REQUIREMENTS

1. The authority for part 123 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Amend § 123.44 to add paragraph (k) to read as follows:

§ 123.44 EPA review of and objections to State permits.

* * * * *

(k)(1) Where a State fails to submit a new draft or proposed permit to EPA within 90 days after the expiration of the existing permit, EPA may review the administratively-continued permit, using the procedure described in paragraphs (a)(1) through (h)(3) of this section, if:

(i) The administratively-continued permit allows the discharge of pollutants into a waterbody for which EPA has established or approved a TMDL and the permit is not consistent with an applicable wasteload allocation; or

(ii) The administratively-continued permit allows the discharge of a pollutant(s) of concern into a waterbody that does not meet water quality standards and for which EPA has not established or approved a TMDL.

(2) To review an expired and administratively-continued permit under this subsection, EPA must give the State and the discharger at least 90 days notice of its intent to consider the expired permit as a proposed permit. At any time beginning 90 days after permit expiration, EPA may submit this notice.

(3) If the State submits a draft or proposed permit for EPA review at any time before EPA issues the permit under paragraph (h) of this section, EPA will withdraw its notice of intent to take permit authority under this subsection and will evaluate the draft or proposed permit under this section.

PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.* Clean Air Act 42 U.S.C. 7401 *et seq.*

2. Section 124.7 is revised to read as follows:

§ 124.7 Statement of basis.

EPA shall prepare a statement of basis for every draft permit for which a fact sheet under 124.8 is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis must also include the reasons for any determinations made, limitations derived or requirements set to satisfy the provisions under § 122.4(j) of this chapter.

3. Amend § 124.56 by revising (b)(1)(ii); (b)(1)(iii) and (b)(1)(iv) and by adding paragraph (b)(1)(v) to read as follows:

§ 124.56 Fact sheets.

* * * * *

(b)(1) * * *

(ii) Limitations on internal waste streams under § 122.45(i) of this chapter;

(iii) Limitations on indicator pollutants under Sec. 125.3(g) of this chapter;

(iv) Limitations set on a case-by-case basis under Sec. 125.3 (c)(2) or (c)(3) of this chapter, or pursuant to Section 405(d)(4) of the CWA; or

(v) Limitations and/or requirements derived to satisfy the provisions under § 122.4(j) of this chapter.

* * * * *

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Amend § 131.12 to redesignate paragraph (a)(1) as paragraph (a)(1)(i) and add new paragraph (a)(1)(ii) to read as follows:

§ 131.12 Antidegradation policy.

(a) * * *

(i) * * *

(ii) In order to authorize a new discharger or an existing discharger undergoing a significant expansion as defined in 40 CFR 122.2, that is not a small entity as defined in 5 U.S.C. 601(6), to discharge into a waterbody that does not attain water quality standards the pollutant(s) causing the nonattainment and for which EPA has not approved or established a Total Maximum Daily Load for a pollutant(s) causing the nonattainment, reasonable further progress shall be made toward attaining the water quality standard. Reasonable further progress for these dischargers means, at a minimum, that any increase in mass loadings of the pollutant(s) causing the nonattainment will be offset by pollutant(s) load reductions of the pollutant(s) causing the nonattainment by a ratio of at least equal to 1.5:1.

(A) The Director may determine that an offset in pollutant load reduction(s) at a ratio of less than 1.5:1, but more than 1:1, is sufficient to achieve reasonable further progress.

(B) Where the Director determines that any offset may result in further degradation of water quality, the Director need not require an offset.

(C) A discharger required to obtain an offset shall comply with the requirements under § 122.4(j)(2) of this chapter.

* * * * *

[FR Doc. 99–21415 Filed 8–20–99; 8:45 am]

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Part IV

Department of Housing and Urban Development

48 CFR Part 2401 et al.
HUD Acquisition Regulation; Miscellaneous Revisions; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

48 CFR Parts 2401, 2402, 2403, 2409, 2413, 2414, 2415, 2416, 2419, 2424, 2425, 2426, 2428, 2432, 2433, 2436, 2437, 2439, 2442, 2446, 2451, 2452 and 2453

[Docket No. FR–4115–I–01]

RIN 2535–AA24

HUD Acquisition Regulation; Miscellaneous Revisions

AGENCY: Office of the Chief Procurement Officer, HUD.

ACTION: Interim rule.

SUMMARY: This rule amends the Department of Housing and Urban Development (HUD) Acquisition Regulation (HUDAR) to implement changes made to the Federal Acquisition Regulation since the HUDAR's last issuance, and implement requirements of the Federal Acquisition Reform Act of 1996.

DATES: Effective Date: September 22, 1999.

Comment Due Date: October 22, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing & Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000. Communication should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 am and 5:30 pm weekdays at the above address. Facsimile comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Field Operations Division, Office of Procurement and Contracts, Room 5262, 451 Seventh Street, SW., Washington, DC 20410–3000 (voice (202) 708–0294, TDD (202) 708–1112). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The uniform regulation for the procurement of supplies and services by Federal departments and agencies, the Federal Acquisition Regulation (FAR), was promulgated on September 19, 1983 (48 FR 42102). The FAR is codified in title 48, chapter 1, of the Code of Federal Regulations. HUD promulgated its regulation to implement the FAR on March 1, 1984 (49 FR 7696).

The HUDAR (title 48, chapter 24 of the Code of Federal Regulations) is prescribed by the Chief Procurement Officer under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)); section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); the Secretary's delegation effective October 6, 1998, (63 FR 54722); and the general authorization in FAR 1.301.

The most recent version of the HUDAR was published as a final rule on May 1, 1996 (61 FR 19467). Since then, the FAR has undergone numerous revisions. This interim rule amends the HUDAR to conform to the current FAR numbering, correct FAR citations and references, correct or remove obsolete text, clauses and provisions, and make other changes to comply with current FAR requirements. Please note that the Department is also publishing a proposed rule containing additional revisions to the HUDAR.

Section 2401.103 is revised to reflect Departmental reassignment of responsibility for prescribing the HUD Acquisition Regulation from the Assistant Secretary for Administration to the Chief Procurement Officer.

Section 2401.601 is revised to reflect the change in the designation of the Department's Senior Procurement Executive from the Assistant Secretary for Administration to the Chief Procurement Officer and related changes to the contracting authority of Departmental components.

Section 2401.603–2 is revised to delete obsolete language regarding the appointment of persons other than full-time Contracting Officers and the maintenance of certificates of appointment.

Section 2401.603–3 is revised to delete language redundant to the FAR and obsolete language concerning waivers to the selection criteria. Paragraph (b), which contained a requirement that the appointing official execute a separate statement that a selectee meets the Contracting Officer selection criteria, is deleted. The execution of the SF 1402, Certificate of Appointment, by the selecting official is sufficient evidence of the official's determination that an individual has met the selection criteria.

Section 2402.101 is revised to: change the definition of ''Accounting Office'' and ''Senior Procurement Executive'' to reflect changes in HUD's organization; delete definitions for ''best value,'' ''lowest-priced technically acceptable proposal'' and ''source selection official,'' which are redundant to definitions now in the FAR; and add definitions for ''Government technical representative'' and ''Government technical monitor,'' HUD's terminology for Contracting Officer's (technical) representative.

Section 2403.101 is amended to correct citations of Federal standards of conduct rules and to redesignate sections to reflect current FAR section numbering.

Section 2403.502 is revised to delete the obsolete revision number and date of the cited Departmental handbook and to eliminate the need to revise this provision when and if the handbook is revised in the future.

Section 2409.500 and 2409.504 are removed. The Department believes that adequate guidance and procedures are contained in FAR 9.5.

Numerous sections in Part 2413 are redesignated and retitled to reflect changes in section numbering and titles in FAR Part 13.

Section 2414.407–4 is revised to reflect changes in FAR section numbering.

A new section 2415.204 is added to designate the cognizant HCA as the responsible official for making exemptions pursuant to FAR 15.204(e).

Section 2415.413 is removed to reflect related changes in FAR Part 15.

Section 2415.506 is redesignated as 2415.606 and revised to reflect current Departmental policy concerning the receipt of unsolicited proposals.

Section 2415.604 is redesignated as 2415.303. A new paragraph (a) is added to implement the Departmental policy that the heads of requiring activities (i.e., program offices) serve as the source selection authorities for selections made using the trade-off approach and that the General Counsel or his/her designee serve as the selection authority for procurements for the performance of legal services by outside counsel.

A new section 2416.505 is added to designate the Departmental and contracting activity task order and delivery order ombudsmen.

Section 2415.613 is removed. Federal Acquisition Circular 97–2 removed the provision at FAR 15.613 permitting the use of alternative source selection procedures previously used by NASA and the Defense Department. Given the authority now contained in FAR 15.306(c)to limit the competitive range, the Department has determined that its alternative selection process is no longer needed.

In section 2419.503, the words ''Acquired Property'' are replaced with ''Real Estate Owned'' to reflect a change in Departmental terminology.

Section 2419.708 is revised to add a prescription for the use of a new clause at 2452.219–71.

The clause prescription at section 2424.202–70 and the relevant clause at

2452.224–70 are removed. The clause, which permitted the disclosure of proposals, is contradictory to the prohibition against such disclosure at FAR 24.202.

Numerous revisions are made to Parts 2425 and 2426 to align section numbering with the current FAR.

Section 2428.106–6 is revised to designate the Contracting Officer as the authorized Departmental official to furnish bonding information requested in accordance with FAR 28.106–6.

In section 2432.402, paragraph (c)(1) is revised to designate the HCAs as the Departmental officials authorized to make required determinations and findings with regard to advance payments. This is a change in terminology. The field contracting directors and Director, Office of Procurement and Contracts, currently the authorized officials, are HCAs.

In section 2432.908, the prescription for the use of alternates to the clauses at 2452.232–70 and 2452.232–71 is removed to reflect the Department's standardization contract payment invoicing procedures.

Part 2433 is revised to implement Departmental rules for agency-level protests in accordance with FAR 33.103(d)(4).

Section 2433.101–70 is removed. FAR 33.101 defines ''day'' for the purposes of this subpart.

Section 2433.102–70 is revised to clarify that HUD's Office of General Counsel has responsibility for handling protests filed with the GAO or other external adjudicating body, but not for agency-level protests made to the Contracting Officer.

Section 2433.103 is revised to establish a ten (10) day limit on requests for reviews of Contracting Officer decisions in agency-level protests. The ten (10) day period begins with the protestor's receipt of the decision. This section further designates the Head of the Contracting Activity as the Departmental official authorized to review the Contracting Officer's protest decision and approve any determination to award, or not suspend, a contract pending resolution of the protest.

Section 2433.103–70 is removed. The Department will use the standard time frame for responses to agency-level protests provided at FAR 33.103(g).

Section 2433.105 is deleted to reflect deletion of this coverage from the FAR.

Section 2437.110 is revised to redesignate paragraphs to reflect the consolidation of clauses at 2452.237–73 and 2452.237–74 into a single clause and the redesignation of paragraph (g). Paragraph (e) is revised to better clarify the applicability of the clause at 2452.237–75.

Section 2437.110, paragraph (g), which prescribes the use of a clause for background investigations of personnel who work on sensitive automated systems, is redesignated as 2439.107(a). As this requirement concerns information technology systems, it is more appropriately located in Part 2439.

A new Section 2442.1502 is added to designate the Chief Procurement Officer as the Departmental official responsible for implementing procedures for evaluating contractor performance in accordance with FAR 42.1502 and 42.1503.

Subpart 2446.6 is removed. The requirement for use of a the form HUD–9519 for property inspections is not appropriately promulgated via the HUDAR. Where applicable for individual contracts, the use of this form may be expressed in the special provisions.

Section 2451.303 is redesignated as 2451.7001 to reflect the deletion of such instruction from the FAR. The section is revised to clarify that contractors under cost reimbursement contracts should make use of all available travel discounts; that the contractor is responsible for providing his/her employees with documentation required by vendors to obtain discounts; and to delete guidance in paragraph (c) which is redundant to FAR Part 31.

In section 2452.216–73, paragraph (b) is revised to clarify the original intent of the clause, i.e., that HUD may unilaterally revise performance evaluation plans (for award fee contracts) prior to the beginning of each contract period within the overall contract term.

A new section 2452.219–71 is added to require contractors to submit one copy of all required subcontracting reports (i.e., SF 294 and SF 295) to the Department's Office of Small and Disadvantaged Business Utilization (OSDBU).

Section 2452.232–70 is revised in accordance with revisions made to section 2432.908 and to comply with the electronic funds payment information requirements in FAR clauses 52.232–33 and 52.232–34.

Section 2452.232–71 is revised to comply with the electronic funds payment information requirements in FAR clauses 52.232–33 and 52.232–34; and to reflect changes in Departmental invoicing procedures.

Section 2452.233–70 is added to implement HUD's rules on internal reviews of HUD Contracting Officers' decisions on agency-level protests.

Section 2452.237–73 is revised to consolidate in it the former clauses at 2452.237–73 and 2452.237–74 regarding the provision of technical guidance to contractors by HUD technical staff. Section 2452.237–74 is removed.

Section 2452.237–75 is revised to clarify HUD's clearance requirements for contractor personnel who work on-site in HUD facilities.

Section 2452.237–76 is redesignated 2452.239–70 in accordance with changes made to section 2437 described above. The clause is also revised to reflect changes in HUD's requirements for background investigations for contractor employees who have access to Departmental information systems.

Section 2452.237–77 is revised to correct the prescriptive reference and to clarify the treatment of costs of salaries and wages of contractor personnel when HUD facilities are closed for administrative leave.

Part 2453 is revised to make miscellaneous corrections in terminology (e.g., changing ''HUD Form'' to ''form HUD-'') and remove obsolete forms.

Findings and Certifications

Justification for Interim Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest.'' (24 CFR 10.1) The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary because this interim rule amends the HUDAR to conform to the current FAR numbering, correct FAR citations and references, correct or remove obsolete text, clauses and provisions, and make other changes to comply with current FAR requirements. In addition, these amendments do not have a significant effect beyond the internal operating procedures of the agency, or a significant cost or administrative impact on contractors or offerors, which would have subjected them to the FAR 1.301(c) requirement that agency acquisition regulations be published for comment in the **Federal Register** in conformance with the procedures of FAR subpart 1.5. The Department invites public comment on the rule, however, to assure that

consideration is given to the full range of views that may be presented in the development of a final rule that will supersede this interim rule.

Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. Small businesses are specifically invited, however, to comment on whether this rule will significantly affect them, and persons are invited to submit comments according to the instructions in the **DATES** and **COMMENTS** sections in the preamble of this interim rule.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(1) of the HUD regulations, the policies and procedures in this document are not subject to the individual compliance requirements of the authorities cited in 24 CFR 50.4, and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act of 1969. Accordingly, a Finding of No Significant Impact is not required.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of Government. No programmatic or policy changes will result from this document's promulgation that would affect the relationship between the Federal Government and State and local governments.

Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This rule will not pose an environmental health risk or safety risk to children.

List of Subjects in 24 CFR Parts 2401, 2402, 2403, 2409, 2413, 2414, 2415, 2416, 2419, 2424, 2425, 2426, 2428, 2432, 2433, 2436, 2437, 2439, 2442, 2446, 2451, 2452 and 2453

Government procurement, HUD acquisition regulations.

Accordingly, title 48, Chapter 24 of the Code of Federal Regulations, is amended as follows:

PART 2401—FEDERAL ACQUISITION REGULATION SYSTEM

1. The authority citation for part 2401 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2401.103 [Amended]

2. In § 2401.103, the words ''Assistant Secretary for Administration'' are revised to read ''Chief Procurement Officer.''

2401.105–2 [Amended]

3. In § 2401.105–2(c) all references to ''2401.104–2'' are revised to read ''2401.105–2''.

4. In § 2401.601–70, the first sentence is revised to read as follows.

2401.601–70 Senior Procurement Executive.

The Chief Procurement Officer is the Department's Senior Procurement Executive and is responsible for all Departmental procurement policy, regulations, and procedures. * * *

5. Section 2401.601–71 is revised to read as follows:

2401.601–71 Office of Procurement and Contracts.

The Office of Procurement and Contracts, within the Office of the Chief Procurement Officer, including its Field Contracting Operations, is responsible for all Departmental procurement.

2401.601–72 [Removed]

6. Section 2401.601–72 is removed.

2401.601–73 [Removed]

7. Section 2401.601–73 is removed.

8. In § 2401.603–2, the first paragraph and paragraph (d) are revised to read as follows:

2401.603–2 Selection.

In selecting Contracting Officers, the appointing authorities shall consider the experience, education, training, business acumen, judgment, character, reputation and ethics of the individual to be appointed. The appointing authorities shall also consider the size and complexity of contracts the individual will be required to execute and/or administer, and any other limitations on the scope of the authority to be exercised. In the area of experience, education and training, the following shall be required, unless contracting authority is limited to simplified acquisition procedures:

* * * * *

(d) The selection requirements specified in paragraphs (a) through (c) of this section are applicable to all personnel whose primary duties are performed as a Contracting Officer.

9. Section 2401.603–3 is revised to read as follows:

2401.603–3 Appointment.

(a) Appointments to officials not expressly delegated procurement authority by a published departmental delegation of authority shall be made in writing by the Head of the Contracting Activity. The Certificate of Appointment (SF 1402) shall constitute the appointing official's determination that the appointee meets the selection requirements set forth at 2401.603–2.

PART 2402—DEFINITIONS OF WORDS AND TERMS

10. The authority citation for part 2402 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

11. Section 2402.101 is revised to read as follows:

2402.101 Definitions.

Accounting Office means the Office of Accounting Operations within the Office of the Chief Financial Officer and includes that Office's field components.

Chief Procurement Officer means the HUD official having authority for all of the Department's procurement activities.

Department means the Department of Housing and Urban Development, which may also be designated as HUD.

Government Technical Monitor (GTM) means the individual responsible for assisting a Government Technical Representative in the latter's performance of his/her duties.

Government Technical Representative (GTR) means the individual serving as the Contracting Officer's representative responsible for monitoring the technical aspects of a contract, including guidance, oversight, and evaluation of the Contractor's performance and deliverables.

Head of Contracting Activity (HCA) is defined in accordance with the FAR. The following HUD officials are designated HCAs:

(1) Director, Office of Procurement and Contracts, for HUD Headquarters procurement; and

(2) The Directors, Field Contracting Operations, for field procurement.

Legal Counsel means the Office of General Counsel in Headquarters, or the cognizant Assistant General Counsel in the field.

Primary Organization Heads are those officials of the Department who are responsible for the major organizational components of HUD and who report directly to the Secretary or Deputy Secretary. The Primary Organization Heads of HUD include the Assistant Secretaries and equivalent Departmental management (e.g., President, GNMA, Inspector General, General Counsel, Chief Procurement Officer, etc.).

Secretary means the Secretary of the Department of Housing and Urban Development, or his or her designee.

Senior Procurement Executive means the Chief Procurement Officer.

PART 2403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

12. The authority citation for part 2403 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

13. Section 2403.101 is revised to read as follows:

2403.101 Standards of conduct.

Detailed rules which apply to the conduct of HUD employees are set forth in 5 CFR part 2635 and 5 CFR part 7501.

2403.408–1 [Removed]

14. Section 2403.408–1 is removed.

2403.409 [Redesignated]

15. Section 2403.409 is redesignated as 2403.405.

2403.502–70 [Redesignated]

16. Section 2403.502 is redesignated as 2403.502–70 and revised to read as follows:

2403.502–70 Subcontractor kickbacks.

Contracting Officers shall report suspected violations of the Anti-Kickback Act through the Head of the Contracting Activity to the Office of the Inspector General consistent with the procedures for reporting any violation of law contained in the current HUD Handbook 2000.3, Office of Inspector General Activities.

2403.601 [Redesignated]

17. Section 2403.601 is redesignated as 2403.602.

Part 2409—Contractor Qualifications

18. The authority citation for part 2409 continues to read as follows:

Authority: 40 U.S.C. 486(c); and 42 U.S.C. 3535(d).

19. The title of Subpart 2409.5 is amended to add the words ''and Consultant'' after the word ''Organizational.''

2409.500 [Removed]

20. Section 2409.500 is removed.

2409.502 [Removed]

21. Section 2409.502 is removed.

2409.504 [Removed]

22. Section 2409.504 is removed.

2409.701 [Redesignated]

23. Section 2409.701 is redesignated as 2409.7001.

PART 2413—SIMPLIFIED ACQUISITION PROCEDURES

24. The authority citation for part 2413 continues to read as follows:

Authority: 40 U.S.C. 486(c); and 42 U.S.C. 3535(d).

2413.106–2 [Removed]

25. Section 2413.106–2 is removed.

2413.402 [Redesignated]

26. Section 2413.402 is redesignated as 2413.305–2 and a new subpart 2413.3 are added to read as follows:

Subpart 2413.3—Simplified Acquisition Methods

2413.403 [Redesignated]

27. Section 2413.403 is redesignated as 2413.305–3, and the FAR reference in the text is revised from ''13.403(a)'' to read ''13.305–3''.

2413.505–1 [Redesignated]

28. Section 2413.505–1 is redesignated as 2413.307 and retitled, ''Forms.''

2413.601 [Redesignated]

29. Section 2413.601 is redesignated as 2413.301 and retitled ''Governmentwide commercial purchase card'', subpart heading 2413.6 is removed.

PART 2414—SEALED BIDDING

30. The authority citation for part 2414 continues to read as follows:

Authority: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

2414.407–4 [Amended]

31. Section 2414.407–4 is amended by deleting ''(1) and (2)'' from the FAR citation in the text.

PART 2415—CONTRACTING BY NEGOTIATION

32. The authority citation for part 2415 continues to read as follows:

Authority: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

33. A new subpart 2415.2 and a new section 2415.204 are added to read as follows:

Subpart 2415.2—Solicitation and Receipt of Proposals and Information

2415.204 Contract format.

(e) The cognizant HCA shall be responsible for making exemptions pursuant to FAR 15.204(e).

2415.407 [Redesignated]

34. Subpart 2415.4 is removed and section 2415.407 is redesignated as 2415.209 and revised to read as follows:

2415.209 Solicitation provisions.

(a) The Contracting Officer shall insert a provision substantially the same as the provision at 48 CFR 2452.215–70, Proposal Content, in all solicitations for negotiated procurements using the trade-off selection process expected to exceed the simplified acquisition threshold. The Contracting Officer shall adapt paragraph (c) of the provision (i.e., include, delete or further supplement subparagraphs) to address the particular requirements of the immediate solicitation. The provisions may be used in simplified acquisitions when it is necessary to obtain technical and management information in making the award selection. When award selection will be made through the lowest price technically acceptable method, the provision shall be used with its Alternate I. If the proposed contract requires work on or access to sensitive automated systems or applications (see the clause at 48 CFR 2452.239–70), the provision shall be used with its Alternate II.

2415.413 [Removed]

35. Section 2415.413 is removed.

2415.413–1 [Removed]

36. Section 2415.413–1 is removed.

2415.413–2 [Removed]

37. Section 2415.413–2 is removed.

2415.505 and 2415.605 [Redesignated]

38. Section 2415.605 is redesignated as 2415.304 and section 2415.505 is redesignated as 2415.605.

2415.505–70 [Redesignated]

39. Section 2415.505–70 is redesignated as 2415.605–70, and in the first sentence the number ''15.5'' is revised to read ''15.6''.

2415.506 [Redesignated]

40. Section 2415.506 is redesignated as 2415.606 and is revised to read as follows:

2415.606 Agency procedures.

(a) The contact points shall ensure that unsolicited proposals are controlled, evaluated, safeguarded and disposed of in accordance with FAR subpart 15.6. Proposals, as used in this section shall mean proposals for procurement contracts with the Department and shall not include proposals or applications for assistance, including grants or cooperative agreements.

(b) Unless otherwise specified in a **Federal Register** announcement, unsolicited proposals should be submitted to—

(1) For research—Department of Housing and Urban Development, Office of Policy Development and Research, PD&R Correspondence Unit (Room 8228), 451 7th Street, SW, Washington, DC 20410.

(2) For all others—Department of Housing and Urban Development, Director, Office of Procurement and Contracts (NC), 451 7th Street, SW, Washington, DC 20410.

2415.604 [Redesignated]

41. A new subpart 2415.3 is added and section 2415.604 is redesignated as 2415.303 and revised to read as follows:

Subpart 2415.3—Source Selection

2415.303 Responsibilities.

(a) In accordance with FAR 15.303, the source selection authorities are designated as follows:

(1) The Contracting Officer, for contracts awarded using the ''lowest-priced technically-acceptable proposal'' process; and,

(2) The head of the office initiating the procurement, or his/her designee, for contracts awarded using the ''trade-off'' process. The head of the initiating office may also delegate this function to the Contracting Officer.

(3) For procurements for the performance of legal services by outside counsel, using either the ''lowest-price technically acceptable'' or ''tradeoff'' approach, the General Counsel or his/her designee.

(b) The technical requirements related to source selection shall be performed by a Technical Evaluation Panel (TEP). Generally, a TEP will consist of three to five members, with one member serving as the chairperson. For procurements involving technical complexity, the TEP may include advisors and committees to focus on specific technical areas or concerns. For relatively low dollar value and routine acquisitions of equipment, supplies or services, the TEP may consist of one technical representative. The TEP is responsible for documenting the evaluation of all proposals as appropriate to the source selection approach in use and for making the source selection recommendation to the source selection authority.

2415.605 [Redesignated]

42. Newly redesignated section 2415.304 is revised to read as follows:

2415.304 Evaluation factors.

(d)(1) The solicitation shall state the basis for the source selection decision as either ''lowest-price technically acceptable'' process (LPTA) or ''trade-off process'' (as defined at FAR subpart 15.1).

(2) When using the trade-off process, each technical evaluation factor and subfactor shall be assigned a numerical weight (except for pass-fail factors) which shall appear in the RFP. When using LPTA, each evaluation factor is applied on a ''pass-fail'' basis; numerical scores are not assigned. ''Pass-fail'' evaluation factors define a standard of comparison for solicitation/contract requirements which proposals either completely satisfy or fail to meet.

(3) For procurements for the performance of legal services by outside counsel, using either the ''lowest-price technically acceptable'' or ''tradeoff'' approach, the General Counsel or his/her designee.

2415.608 [Redesignated]

43. Section 2415.608 is redesignated as 2415.305; the reference to ''FAR 15.608(a)(3)'' in paragraph (3) is revised to ''FAR 15.305(a)(3)''; the words ''best value approach'' in paragraph (3) are revised to read ''trade-off process''; and paragraph (b) is removed.

2415.610 [Removed]

44. Section 2415.610 is removed.

2415.611 [Redesignated]

45. Section 2415.611 is redesignated as 2415.308 and revised to read as follows:

2415.308 Source selection decision.

After receipt and evaluation of final proposal revisions, the TEP shall document its selection recommendation(s) in a final written report. The final report shall include sufficient information to support the recommendation(s) made, appropriate to the source selection approach and type and complexity of the acquisition.

2415.613 [Removed]

46. Section 2415.613 is removed.

2415.613–70 [Removed]

47. Section 2415.613–70 is removed.

2415.613–71 [Removed]

48. Section 2415.613–71 is removed.

2415.1005 [Redesignated]

49. Section 2415.1005 is redesignated as 2415.507.

PART 2416—TYPES OF CONTRACTS

50. The authority citation for part 2416 continues to read as follows:

Authority: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

2416.405 [Redesignated]

51. Section 2416.405 is redesignated as 2416.406.

52. A new subpart 2416.5 and a new section 2416.505 are added to read as follows:

Subpart 2416.5—Indefinite-Delivery Contracts

2416.505 Ordering.

(b)(6) The Departmental competition advocate also serves as the Departmental ombudsman for task and delivery order contracts in accordance with FAR 16.505(b)(6).

(i) Each HCA shall designate a contracting activity ombudsman for task and delivery order contracts.

(ii) The contracting activity ombudsman shall:

(A) Review complaints from contractors concerning task or delivery orders placed by the contracting activity;

(B) Be independent of the contracting officer who awarded or is administering the contract under which a complaint is submitted;

(C) Recommend any corrective action to the cognizant contracting officer; and

(D) Refer to the Departmental ombudsman issues which cannot be resolved.

(iii) Contractors may request that the Departmental Ombudsman review complaints when they disagree with the contracting activity ombudsman's review.

53. Section 2416.603–2 is revised to read as follows:

2416.603–2 Application.

(c) The HCA shall approve additional time periods for definitization of letter contracts authorized by the Contracting Officer pursuant to FAR 16.603–2(c).

PART 2419—SMALL BUSINESS PROGRAMS

54. The authority citation for part 2419 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2419.503 [Amended]

55. In § 2419.503, the words ''Acquired Property'' are revised to read ''Real Estate Owned.''

56. In § 2419.708, footnote 3 is removed and a new paragraph (f) is added to read as follows:

2419.708 Solicitation provisions and contract clauses.

* * * * *

(f) The Contracting Officer shall insert the clause at 48 CFR 2452.219–71 in solicitations exceeding $500,000 that are not set aside for small businesses or to be accomplished under the 8(a) program. The Contracting Officer shall insert the clause in all contracts exceeding $500,000 ($1,000,000 for construction) that are not awarded to small businesses or to 8(a) business concerns.

PART 2424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

57. The authority citation for part 2424 is revised to read as follows:

Authority: 5 U.S.C. 552, 552a; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

58. The heading for subpart 2424.1 is revised to read as follows:

Subpart 2424.1—Protection of Individual Privacy

2424.202 [Redesignated]

59. Section 2424.202 is redesignated as 2424.203.

2424.202–70 [Removed]

60. Section 2424.202–70 is removed.

PART 2425—FOREIGN ACQUISITION

61. The authority citation for part 2425 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

2425.402 [Amended]

62. Section 2425.402 is amended by adding the paragraph designation ''(a)(1)'' to the beginning of the text.

PART 2426—OTHER SOCIOECONOMIC PROGRAMS

63. The authority citation for part 2426 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2426.701 [Redesignated]

64. Section 2426.701 is redesignated as 2426.7001.

2426.702 [Redesignated]

65. Section 2426.702 is redesignated as 2426.7002.

PART 2428—BONDS AND INSURANCE

66. The authority citation for part 2428 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

67. Section 2428.106–6 is revised to read as follows:

2428.106–6 Furnishing information.

(c) The Contracting Officer shall furnish the certified copy of the bond and the contract for which it was given to any person who requests them in accordance with FAR 28.106–6.

PART 2432—CONTRACT FINANCING

68. The authority citation for part 2432 continues to read as follows:

Authority: 31 U.S.C. 3901–3906; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

69. The heading for subpart 2432.4 is revised to read as follows:

Subpart 2432.4—Advance Payments for Non-Commercial Items

70. In § 2432.402 paragraph (e)(1) is revised to read as follows:

2432.402 General.

(e)(1) The determination and findings required by FAR 32.402(c)(1)(iii) shall be made by the HCA.

* * * * *

2432.906 [Amended]

71. Section 2432.906 is amended by adding the paragraph designation ''(a)'' to the beginning of the text.

72. Section 2432.908 is revised to read as follows:

2432.908 Contract clauses.

(c)(1) The Contracting Officer shall insert a clause substantially the same as provided at 48 CFR 2452.232–70, Payment Schedule and Invoice Submission (Fixed-Price), in all fixed-price solicitations and contracts except those for commercial services awarded pursuant to FAR part 12.

(2) The Contracting Officer shall insert a clause substantially the same as provided at 48 CFR 2452.232–71, Voucher Submission (Cost-Reimbursement), in all cost-reimbursement solicitations and contracts when vouchers are to be sent directly to the paying office.

PART 2433—PROTESTS, DISPUTES AND APPEALS

73. The authority citation for part 2433 continues to read as follows:

Authority: 31 U.S.C. 3551–3556; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2433.101–70 [Removed]

74. Section 2433.101–70 is removed.

75. Section 2433.102–70 is revised to read as follows:

2433.102–70 Responsibility.

With the exception of protests filed directly with the Department pursuant to FAR 33.103, the Office of General Counsel has responsibility for handling matters relating to protests against award of contracts by the Department. All written communications from the Department to the GAO or other adjudicating body shall be made by the Office of General Counsel. The Contracting Officer has responsibility for furnishing the Office of General Counsel with all information relating to a protest.

76. Section 2433.103 is revised to read as follows:

2433.103 Protests to the agency.

(d)(2) Appeals of Contracting Officer protest decisions shall include the information required at FAR 33.103(d)(2)(i), (ii), (iii), (iv), (v) and (vi).

(d)(4)(i) Protesters may request an appeal of the Contracting Officer's decision on a protest. Such requests shall be made in writing to the cognizant HCA not later than 10 days after receipt of the Contracting Officer's decision.

(ii) The HCA, in consultation with the Office of General Counsel, shall make all independent reviews of the Contracting Officer's decision requested by protesters in accordance with FAR 33.103(d)(4) and provide the protester with the HCA's decision on the appeal.

(f)(1) A determination by the Contracting Officer to award a contract pending resolution of a protest as authorized by FAR 33.103 shall be approved by the HCA in consultation with the Office of General Counsel.

(f)(3) A determination by the Contracting Officer to not suspend performance of a contract pending resolution of a protest as authorized by FAR 33.103 shall be approved by the HCA in consultation with the Office of General Counsel.

2433.103–70 [Removed]

77. Section 2433.103–70 is removed.

2433.105 [Removed]

78. Section 2433.105 is removed.

79. A new section 2433.106 is added to read as follows:

2433.106 Solicitation provision.

The Contracting Officer shall insert the provision at 2452.233–70, Review of Contracting Officer Protest Decisions, in all solicitations for contracts expected to

exceed the simplified acquisition threshold.

PART 2436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

80. The authority citation for part 2436 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2436.602–5 [Amended]

81. In § 2436.602–5, the words ''small purchase limitation'' are revised to read ''simplified acquisition threshold.''

PART 2437—SERVICE CONTRACTING

82. The authority citation for part 2437 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2437.101 [Removed]

83. Section 2437.101 is removed.

84–85. Section 2437.110 is amended by removing footnote 4; redesignating paragraph (g) as 2439.107(a); removing paragraph (e); redesignating paragraphs (f) and (h) as paragraphs (e) and (f); revising paragraphs (d) and redesignated paragraph (e) to read as follows:

2437.110 Solicitation provisions and contract clauses.

* * * * *

(d) The Contracting Officer shall insert the clause at 48 CFR 2452.237–73, Conduct of Work and Technical Guidance, in all service contracts other than contracts for commercial services awarded pursuant to FAR Part 12.

(e) The Contracting Officer shall insert the clause at 48 CFR 2452.237–75, Clearance of Contractor Personnel, in solicitations and contracts when contractor personnel will be required to work in and/or will have access to HUD facilities on a routine, ongoing basis and/or at all hours, e.g., performing custodial, building operations, maintenance, or security services. The clause shall be inserted in all solicitations and contracts for building/facility management and operations services. The clause may be used for other types of contracts (e.g., information technology services) when suitable as determined by the Contracting Officer.

* * * * *

2437.205 [Removed]

86. Section 2437.205 is removed.

PART 2439—ACQUISITION OF INFORMATION TECHNOLOGY

87. The authority citation for part 2439 reads as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

88. Newly designated section 2439.107 is revised to read as follows:

2439.107 Contract clauses.

(a) The Contracting Officer shall insert the clause at 48 CFR 2452.239–70, Background Investigations for Sensitive Automated Systems/Applications, in solicitations and contracts that involve work on, or access to, sensitive Departmental automated information systems or applications as they are defined in the clause.

PART 2442—CONTRACT ADMINISTRATION

89. The authority citation for part 2442 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

90. A new subpart 2442.15 and a new section 2442.1502 are added to read as follows:

Subpart 2442.15—Contractor Performance Information

2442.1502 Policy.

The Chief Procurement Officer is responsible for establishing past performance evaluation procedures and systems as required by FAR 42.1502 and 42.1503.

PART 2446—QUALITY ASSURANCE

91. The authority citation for part 2446 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

Subpart 2446.6—[Removed]

92. Subpart 2446.6 is removed.

PART 2451—USE OF GOVERNMENT SOURCES BY CONTRACTORS

93. The authority citation for part 2451 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

Subpart 2451.3—[Redesignated]

94. Subpart 2451.3 is redesignated as subpart 2451.70.

2451.303 [Redesignated]

95. Section 2451.303 is redesignated as 2451.7001 and revised to read as follows:

2451.7001 Contract clause.

The Contracting Officer shall insert the clause at 48 CFR 2452.251–70, Contractor Employee Travel, in cost-reimbursement solicitations and contracts involving contractor travel.

PART 2452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

96. The authority citation for part 2452 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

97–98. In section 2452.215–70, the date and the first paragraph of Alternate I is revised and Alternate II is revised to read as follows:

2452.215–70 Proposal Content.

* * * * *

Alternate I (Oct 1999)

As prescribed in 2415.209(a), if the award selection will be made through the lowest-priced technically acceptable proposal method, substitute paragraph (c) with the following:

* * * * *

Alternate II (Oct 1999)

As prescribed in 2415.209(a), if the proposed contract requires work on, or access to, sensitive automated systems as described in 2452.239–70, add the following subparagraph, numbered sequentially, to paragraph (c):

The offeror shall describe in detail how the offeror will maintain the security of automated systems as required by clause at 48 CFR 2452.239–70 in Section I of this solicitation.

(End of Provision)

99. In § 2452.216–73 paragraph (b) is revised to read as follows:

2452.216–73 Performance evaluation plan.

* * * * *

(b) The Government may unilaterally change the award fee plan prior to the beginning of subsequent evaluation periods. The Contracting Officer will provide such changes in writing to the Contractor prior to the beginning of the applicable evaluation period.

100. A new section 2452.219–71 is added to read as follows:

2452.219–71 Submission of subcontracting reports.

As prescribed in 2419.708(f) insert the following clause:

Submission of Subcontracting Reports (Oct 1999)

The Contractor shall submit the Standard Form (SF) 294, Subcontracting Report for Individual Contracts and SF 295, Summary Subcontract Report, in accordance with the instructions on the forms, except that, one copy of each form and any attachments shall be submitted to: Director, Office of Small and Disadvantaged Business Utilization, U.S. Department of HUD, 451 Seventh Street, SW, Room 3130 (SS), Washington, DC 20410–1000.

(End of clause)

2452.224–70 [Removed]

101. Section 2452.224–70 is removed.

102. Section 2452.232–70 is revised to read as follows:

2452.232–70 Payment schedule and invoice submission (fixed-price).

As prescribed in 2432.908(a), insert a clause substantially the same as the following in all fixed-price solicitations and contracts:

Payment Schedule and Invoice Submission (Fixed-Price) (Oct 1999)

(a) *General.* The Government shall pay the Contractor as full compensation for all work required, performed and accepted under this contract, inclusive of all costs and expenses, the firm fixed-price stated in Part I, Section B of this contract.

(b) *Payment Schedule.* Payment of the contract price will be made upon completion and acceptance of all work unless a partial payment schedule is included below [Contracting Officer insert schedule information]:

Partial payment number	Applicable contract deliverable	Delivery date	Payment amount
1. [ ] 2. [ ] 3. [ ] (Continue as necessary)			

(c) *Submission of Invoices.* Invoices shall be submitted as follows—original to the payment office identified on the award document (e.g., in Block 12 on the SF–26 or Block 25 on the SF–33, or elsewhere in the contract) and one copy each to the Government Technical Representative and Contracting Officer. To constitute a proper invoice, the invoice must include all items required by FAR clause 52.232–25, ''Prompt Payment.''

To assist the Government in making timely payments, the Contractor is also requested to include on each invoice the appropriation number shown on the contract award document (e.g., in Block 14 on the SF–26 or Block 21 on the SF–33). The Contractor is also requested to clearly indicate on the mailing envelope that an invoice is enclosed.

(d) *Contractor Remittance Information.* The contractor shall provide the payment office with all information required by FAR clause 52.232–33, ''Mandatory Information for Electronic Funds Transfer Payment,'' 52.232.34, ''Optional Information for Electronic Funds Transfer Payment,'' or other supplemental information (contracts for commercial services) as applicable.

103. Section 2452.232–71 is revised to read as follows:

2452.232–71 Voucher submission (cost-reimbursement).

As prescribed in 2432.908(b), insert a clause substantially the same as the following in all cost-reimbursement solicitations and contracts:

Voucher Submission (Cost-Reimbursement) (Oct 1999)

(a) The Contractor shall submit, on a monthly basis [Contracting Officer may substitute a different time frame, if appropriate], an original and two (2) copies of each voucher. In addition to the items necessary per FAR 52.232–25, ''Prompt Payment,'' the voucher shall show the elements of cost for the billing period and the cumulative costs to date. All vouchers shall be distributed as follows, except for the final voucher which shall be submitted in all copies to the Contracting Officer—original to the payment office (e.g., in Block 12 on the SF–26 or Block 25 on the SF–33, or elsewhere in the contract) and one copy each to the Government Technical Representative and the Contracting Officer identified on the award document.

To assist the Government in making timely payments, the Contractor is requested to include on each voucher the appropriation number shown on the award document (e.g., Block 14 of the SF–26 or Block 21 of the SF–33). The Contractor is also requested to clearly indicate on the mailing envelope that a payment voucher is enclosed.

(b) *Contractor Remittance Information.* The contractor shall provide the payment office with all information required by FAR clause 52.232–33, ''Mandatory Information for Electronic Funds Transfer Payment'' or 52.232.34, ''Optional Information for Electronic Funds Transfer Payment,'' as applicable.

(End of clause)

104. A new Section 2452.233–70 is added to read as follows:

2452.233–70 Review of Contracting Officer protest decisions.

As prescribed in 2433.106, insert the following provision:

Review of Contracting Officer Protest Decisions (Oct 1999)

(a) In accordance with FAR 33.103 and HUDAR 2433.103, a protester may request an appeal of the Contracting Officer's decision concerning a protest initially made by the protester to the Contracting Officer. Such requests shall be made in writing to the cognizant Head of the Contracting Activity (HCA, see definition at HUDAR subpart 2402.1) within 10 days (see FAR 33.101 for the definition of ''days'') of the protestor's notification of the Contracting Officer's decision.

(b) The cognizant HCA shall make an independent review of the Contracting Officer's decision and provide the protester with the HCA's decision on the appeal.

(End of clause)

105. Section 2452.237–73 is revised to read as follows:

2452.237–73 Conduct of work and technical guidance.

As prescribed in 2437.110(d), insert the following clause in all contracts for services:

Conduct of Work and Technical Guidance (Oct 1999)

(a) The Government Technical Representative (GTR) for liaison with the Contractor as to the conduct of work is [insert name] or a successor designated by the Contracting Officer. The Contracting Officer will notify the contractor in writing of any change to the current GTR's status or the designation of a successor GTR.

(b) The GTR will provide guidance to the contractor on the technical performance of the contract. Such guidance shall not be of a nature which:

(1) Causes the Contractor to perform work outside the scope of the contract;

(2) Constitutes a change as defined in FAR 52.243–1;

(3) Causes an increase or decrease in the cost of the contract;

(4) Alters the period of performance or delivery dates; or,

(5) Changes any of the other express terms or conditions of the contract.

(c) The GTR will issue technical guidance in writing or, if issued orally, he/she will confirm such direction in writing within five calendar days after oral issuance. The GTR may issue such guidance via telephone facsimile or electronic mail.

(End of clause)

2452.237–74 [Removed]

106. Section 2452.237–74 is removed.

107. Section 2452.237–75 is revised to read as follows:

2452.237–75 Clearance of contractor personnel.

As prescribed in 2437.110(e), insert the following clause in solicitations and contracts.

Clearance of Contractor Personnel (Oct 1999)

(a) General. This contract requires contractor employees to work in, and have access to, a HUD facility. All such employees shall be required to provide background information and obtain a HUD building pass prior to working in the HUD facility.

(b) Background information. (1) For each contractor employee subject to the requirements of this clause, the contractor shall complete and deliver to the Government Technical Representative (GTR) the following forms: Form FD–258,

''Fingerprinting Charts'' (original and one copy); and GSA Form 176, ''Statement of Personal History'' (original and one copy). The GTR will provide the contractor with blank forms upon request.

(2) The contractor shall deliver the forms required by paragraph (b)(1) to the GTR within five (5) calendar days after contract award or not later than five (5) calendar days before a covered employee will begin work at the HUD facility.

(3) The information provided in accordance with paragraph (b)(1) will be used to perform a background check to determine the eligibility of the contractor employees to work in the HUD facility. After completion of such review, the GTR shall notify the contractor in writing of any contractor employees' ineligibility to work in the HUD facility. The contractor shall immediately remove such employees from work on this contract which requires the employees' physical presence in the HUD facility.

(c) *Building passes.* (1) HUD will issue a building pass to each contractor employee determined to be eligible pursuant to the background check in paragraph (b). The Contractor shall provide the GTR with the names and Social Security numbers of all such employees. Contractor employees shall have their building passes on their persons at all times while working on HUD premises and shall present passes for inspection upon request by HUD officials or HUD security personnel.

(2) Building passes shall identify individuals as contractor employees and shall have an expiration date not exceeding the current term of the contract. Passes shall be renewed for each succeeding contract period, if any.

(3) The contractor shall return a contractor employee's pass to the GTR when the employment of any such employee is terminated, or when the employee no longer has a need for access to the HUD facility. Upon expiration of this contract, the contractor shall return to the GTR all building passes issued by HUD and not previously returned. The contractor is responsible for accounting for all passes issued to the contractor's employees.

(d) *Control of access.* HUD shall have and exercise full and complete control over granting, denying, withholding, and terminating access of contractor employees to HUD facilities. The GTR will notify the contractor immediately when HUD has determined that an employee is unsuitable or unfit for his/her assigned contractual duties, and therefore will no longer be permitted access to the HUD facility. The contractor shall take immediate steps to remove such an employee from working on this contract and provide a suitable replacement.

(e) *Subcontracts.* The contractor shall incorporate this clause in all subcontracts where the requirements specified in paragraph (a) of this section are applicable to performance of the subcontract.

(End of clause)

2452.237–76 [Redesignated]

108. Section 2452.237–76 is redesignated as 2452.239–70 and is revised to read as follows:

2452.239–70 Background investigations for sensitive automated systems/ applications.

As prescribed in 2439.107(a), insert the following clause:

Background Investigations for Sensitive Automated Systems/Applications (Oct 1999)

(a) *General.* This contract involves work on, or access to, [insert name or other identifier], a HUD information resource that is either a major application system or any general support system. A major application system is a mission critical system, a system or information resource which has high investment cost, or any system which contains Privacy Act-covered data. A general support system is any computer facility or major component thereof, or any network or telecommunications resource. All contractor employees working on this contract in positions which HUD has determined to have sensitive access to the information resource(s) identified above are required to have a background investigation. The investigation shall be commensurate with the risk and security controls involved in managing, using or operating the resources identified above, consistent with 5 CFR part 731. HUD may bar contractor employees from working on this contract for failing to meet or maintain the applicable suitability standards administered by the Department's Personnel Security Branch.

(b) *Citizenship-related requirements.* All contractor employees as described in paragraph (a) shall: (1) be United States (U.S.) citizens living in the U.S.; or (2) owe allegiance to the U.S.

(c) *Background investigation process.* (1) The GTR shall notify the contractor of those contractor employee positions requiring background investigations. For each contractor employee in such a position, the contractor shall submit the following completed forms: Standard Form (SF) 85P, Questionnaire for Public Trust Positions; FD–258, Fingerprint Chart; Fair Credit Reporting Act authorization form; and other information as may be necessary. The contractor shall submit an original and one copy of the SF 85P.

(2) The contractor shall deliver the forms and information required in paragraph (c)(1) to the GTR as soon as practicable once the contractor knows that the employee will be assigned to this contract, and no later than seven (7) calendar days after the employee begins work on this contract.

(3) The investigation process shall consist of a range of personal background inquiries and contacts (written and personal) and verification of the information provided on the security forms described in paragraph (c)(1).

(4) Upon completion of the investigation process, the GTR shall notify the contractor in writing of any contractor employees' ineligibility to work on this contract. The contractor shall immediately remove such employees from work on this contract.

(5) The contractor shall notify the GTR in writing whenever a contractor employee for whom a background investigation package was required and submitted to HUD terminates employment or otherwise is no longer performing work under this contract. The contractor shall provide a copy of the written notice to the Contracting Officer.

(d) *Security breach notification.* The contractor shall immediately notify the GTR and the Contracting Officer of any breach or suspected breach of security or any unauthorized disclosure of the information contained in the automated system specified in this contract.

(e) *Nondisclosure of information.* (1) Neither the contractor nor any of its employees shall divulge or release data or information developed or obtained during performance of this contract, except to authorized Government personnel with an established need to know or upon written approval of the Contracting Officer. Information contained in all source documents and other media provided by HUD are the sole property of HUD.

(2) The contractor shall require that any employees who may have access to the automated systems identified in paragraph (a) sign a pledge of nondisclosure of information. These pledges shall be signed by the employees before they are permitted to perform work under this contract. The contractor shall maintain the signed pledges for a period of three years after final payment under this contract.

(f) *Security procedures.* The contractor shall establish personnel security procedures that meet, as a minimum, the requirements of HUD Handbook 2400.24. The contractor shall provide a copy of such procedures and any revisions made to them during the period of the contract to the GTR.

(g) *Contractor compliance.* Failure on the part of the contractor to comply with the terms of this clause may result in termination of this contract for default.

(h) *Other clearance requirements.* When any work performed by contractor personnel on-site in a HUD facility meets the criteria set forth in HUDAR 2437.110(e), the contractor shall also comply with the requirements of the clause at 48 CFR 2452.237–75, Clearance of Contractor Personnel.

(i) *Subcontracts.* The contractor shall incorporate this clause in all subcontracts where the requirements specified in paragraph (a) of this section are applicable to performance of the subcontract.

(End of clause)

109. Section 2452.237–77 is revised to read as follows:

2452.237–77 Observance of legal holidays and administrative leave.

As prescribed in 2437.110(f), insert the following clause:

Observance of Legal Holidays and Administrative Leave (Oct 1999)

(a)(1) The Department of Housing and Urban Development observes the following days as holidays—

New Year's Day
Martin Luther King's Birthday

Washington's Birthday
Memorial Day
Independence Day
Labor Day
Columbus Day
Veterans Day
Thanksgiving Day
Christmas Day

Any other day designated by Federal law, Executive Order, or Presidential Proclamation.

(2) When any holiday specified in (a)(1) falls on a Saturday, the preceding Friday shall be observed. When any such holiday falls on a Sunday, the following Monday shall be observed. Observances of such days by Government personnel shall not be cause for additional period of performance or entitlement to compensation except as set forth in the contract. If the contractor's personnel work on a holiday, no form of holiday or other premium compensation will be reimbursed either as a direct or indirect cost, unless authorized pursuant to an overtime clause elsewhere in this contract.

(b)(1) HUD may close a HUD facility for all or a portion of a business day as a result of—

(A) Granting administrative leave to non-essential HUD employees (e.g., unanticipated holiday);

(B) Inclement weather;

(C) Failure of Congress to appropriate operational funds;

(D) Or any other reason.

(2) In such cases, contractor personnel not classified as essential, i.e., not performing critical round-the-clock services or tasks, who are not already on duty at the facility shall not report to the facility. Such contractor personnel already present shall be dismissed and shall leave the facility.

(3) The contractor agrees to continue to provide sufficient personnel to perform round-the-clock requirements of critical tasks already in operation or scheduled for performance during the period in which HUD employees are dismissed, and shall be guided by any specific instructions of the Contracting Officer or his/her duly authorized representative.

(c) When contractor personnel services are not required or provided due to closure of a HUD facility as described in this clause, the contractor shall be compensated as follows—

(1) For fixed-price contracts, deductions in the contractor's price will be computed as follows—

(A) The deduction rate in dollars per day will be equal to the per month contract price divided by 21 days per month.

(B) The deduction rate in dollars per day will be multiplied by the number of days services are not required or provided.

If services are provided for portions of days, appropriate adjustment will be made by the Contracting Officer to ensure that the contractor is compensated for services provided.

(2) For cost-reimbursement, time-and-materials and labor-hour type contracts, HUD shall not reimburse as direct costs, the costs of salaries or wages of contractor personnel for the period during which such personnel are dismissed from, or do not have access to, the facility.

(d) If administrative leave is granted to contractor personnel as a result of conditions stipulated in any ''Excusable Delays'' clause of this contract, it will be without loss to the contractor. The cost of salaries and wages to the contractor for the period of any such excused absence shall be a reimbursable item of direct cost hereunder for employees whose regular time is normally charged, and a reimbursable item of indirect cost for employees whose time is normally charged indirectly in accordance with the contractor's accounting policy.

(End of clause)

110. Section 2452.251–70 is revised to read as follows:

2452.251–70 Contractor employee travel.

As prescribed in 2451.7001, insert the following clause in all cost-reimbursement solicitations and contracts involving travel:

Contractor Employee Travel (Oct 1999)

(a) To the maximum extent practical, the Contractor shall make use of travel discounts which are available to Federal employees while traveling in the conduct of official Government business. Such discounts may include, but are not limited to, lodging and rental car rates.

(b) The Contractor shall be responsible for obtaining and/or providing to his/her employees written evidence of their status with regard to their performance of Government contract work needed to obtain such discounts.

(End of clause)

Part 2453—Forms

111. The authority citation for part 2453 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

PART 2453—[AMENDED]

112. The words ''HUD Form'' are replaced with ''form HUD-'' throughout part 2453.

2453.213 [Removed]

113. Section 2453.213 is removed.

2453.213–70 [Removed]

114. Section 2453.213–70 is removed.

2453.213–71 [Removed]

115. Section 2453.213–71 is removed.

2453.215–70 [Removed]

116. Section 2453.215–70 is removed.

2453.237–70 [Removed]

117. Section 2453.237–70 is removed.

2453.246–70 [Removed]

118. Section 2453.246–70 is removed.

Dated: July 16, 1999.

V. Stephen Carberry,

Chief Procurement Officer.

[FR Doc. 99–21077 Filed 8–20–99; 8:45 am]

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Federal Register

Monday
August 23, 1999

Part V

Department of Housing and Urban Development

48 CFR Part 2403 et al.
HUD Acquisition Regulation; Miscellaneous Revisions; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

48 CFR Parts 2403, 2409, 2436, 2439, 2442, 2452 and 2453

[Docket No. FR–4291–P–01]

RIN 2535–AA25

HUD Acquisition Regulation; Miscellaneous Revisions

AGENCY: Office of the Chief Procurement Officer (CPE).

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Department of Housing and Urban Development (HUD) Acquisition Regulation (HUDAR) to implement changes applicable to HUD's procurement activities made in the Federal Acquisition Regulation since the HUDAR's last issuance. It would also implement miscellaneous HUD procurement rules as described in the Supplementary Information below.

DATES: Comment Due Date: October 22, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing & Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000. Communication should refer to the above docket number and title. Facsimile comments will not be accepted. A copy of each communication submitted will be available for public inspection and copying between 7:30 am and 5:30 pm weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Frederick Graves, Policy and Field Operations Division, Office of Procurement and Contracts (Seattle Outstation), U.S. Department of Housing and Urban Development, Seattle Federal Office Building, 909 1st Avenue, Seattle, WA 98104–1000, (206) 220–5122, ext. 3450. Hearing or speech-impaired individuals may call (206) 220–5185 (TTY) or 1–800–877–8339 (Federal Information Relay Service TTY). (Other than the ''800'' number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The uniform regulation for the procurement of supplies and services by Federal departments and agencies, the Federal Acquisition Regulation (FAR), was promulgated on September 19, 1983 (48 FR 42102). The FAR is codified in title 48, chapter 1, of the Code of Federal Regulations. HUD promulgated its regulation to implement the FAR on March 1, 1984 (49 FR 7696).

The HUDAR (title 48, chapter 24 of the Code of Federal Regulations) is prescribed by the Chief Procurement Officer under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)); section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); the Secretary's delegation effective October 6, 1998 (63 FR 54723); and the general authorization in FAR 1.301.

The most recent version of the HUDAR was published as a final rule on May 1, 1996 (61 FR 19467). This proposed rule amends the HUDAR to reflect HUD's implementation of changes in the FAR and Federal statutes applicable to HUD's procurement activities. Please note that the Department is also publishing, elsewhere in this issue of the **Federal Register**, an interim rule for comment making other changes to the HUDAR.

Section 2403.670 is revised pursuant to section 4301 of the Federal Acquisition Reform Act of 1996, (Public Law 104–106, 110 Stat. 642, approved February 10, 1996) (1996 FAR Act) to delete the requirement for a certification regarding Federal employment by offerors and contractors.

In accordance with Section 4301 of the 1996 FAR Act, the Department is removing, via this proposed rule, two of its three previously existing regulatory certification requirements that are not statutorily based, viz., 2452.203–71, ''Certification Regarding Federal Employment'' and 2452.209–71, ''Organizational Conflicts of Interest Certification.'' The Chief Procurement Officer has made a determination to retain the certification requirement at Section 2426.703 and the related solicitation provision at 2452.226–70, Certification of Status as a Minority Business Enterprise. The CPE has determined that the Department needs to maintain its capability to provide accurate, timely reporting on its minority contracting activity statistics. This certification is the most efficient means for obtaining the data needed for making such reports.

In section 2439.107 a new paragraph (b) is added to prescribe the use of a computer virus security clause in contracts for information technology.

Section 2442.1106 is revised to replace the Department's current requirement for the use of a specific project planning and monitoring process for certain technical services contracts with a generic requirement for an acceptable planning and monitoring system. The revision allows contractors to develop their own system or use commercially available systems that are acceptable to the contracting officer. This also permits the use of automated planning and monitoring systems to streamline those functions. HUD's current system is not automated.

Section 2452.203–71 is removed to delete the requirement for the non-statutory certification (see comments under 2403.670 above).

Section 2452.209–70 is replaced with a new version of the solicitation provision in which the contracting officer identifies the potential areas for organizational conflicts of interest. This reflects the guidance provided in FAR Subpart 9.5.

Section 2452.209–71 is revised to better conform to the requirements of FAR Subpart 9.5, viz., to place the burden on the contracting officer of describing any potential organizational conflict of interest in the contract. The revised clause also prohibits the contractor's performance under future contracts of work using specifications developed by the contractor under the immediate contract. The contracting officer may also impose additional restrictions via this clause. Section 2452.209–71 is also revised pursuant to section 4301 of the 1996 FAR Act to delete the existing requirement for the submission of an organizational conflict of interest certification by all offerors.

In section 2452.215–70, an Alternate III is added to obtain information required of offerors by the provision at 2452.209–72.

Section 2452.239–71 is added in accordance with 2439.107(b). The clause seeks to prevent the knowing submission by a contractor of information technology containing viruses that the contractor should have detected before such submission.

Section 2452.242–71 is revised to describe in generic terms the Department's requirements for project planning and monitoring systems to be used under contracts exceeding $500,000 for technical or professional services for work of a developmental or advisory nature. This eliminates the requirement for HUD's previous system which was not automated and permits the use of contractors' own automated planning and monitoring systems to streamline those functions. The forms related to the previous system at 2453.242–70 and 2453.242–71 are removed.

Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in the HUDAR,

as described in the table below, have been submitted to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

REPORTING AND RECORDKEEPING BURDEN:

Section reference	Number of parties	Annual freq. of requirement (annum)	Est. avg. time for requirement (hours)	Est. annual burden (hours)
HUDAR:				
2452.209–70	350	1	0.5	175
2452.209–72	5	1	1.0	5
2452.215–70	350	1	120.0	42,000
2452.216–72	2	4	2.0	16
2452.219–70	30	1	0.5	15
2452.219–71	30	4	0.1	12
2452.237–70	30	1	4.0	120
2452.237–75	5	1	5.0	25
2452.239–70	40	1	1.0	40
2452.242–71 (initial plan)	40	1	8.0	320
2452.242–71 (reports)	40	12	8.0	2,880
HUD 770	2	1	0.5	1
Total Reporting and Recordkeeping Burden (Hours)	.....	.....	.....	45,609

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the proposal by name (HUDAR) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

and

Antoinette Henry, Reports Liaison Officer, Office of the Chief Procurement Officer, Department of Housing & Urban Development, 451—7th Street, SW, Room 5262, Washington, DC 20410.

Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. Small businesses are specifically invited, however, to comment on whether this rule will significantly affect them, and persons are invited to submit comments according to the instructions in the **DATES** and COMMENTS sections in the preamble of this proposed rule.

Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321). Accordingly, a Finding of No Significant Impact is not required.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of Government. No programmatic or policy changes will result from this document's promulgation that would affect the relationship between the Federal Government and State and local governments.

Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This rule will not pose an environmental health risk or safety risk to children.

List of Subjects in 48 CFR Parts 2403, 2409, 2436, 2439, 2442, 2452 and 2453.

Government procurement, HUD acquisition regulations.

Accordingly, title 48, chapter 24 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 2403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

1. The authority citation for part 2403 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

2. Section 2403.670 is revised to read as follows:

2403.670 Solicitation provision and contract clause.

Insert the clause at 48 CFR 2452.203–70 in all solicitations and contracts.

PART 2409—CONTRACTOR QUALIFICATIONS

3. The authority citation for part 2409 continues to read as follows:

Authority: 40 U.S.C. 486(c); and 42 U.S.C. 3535(d).

4. Section 2409.507–1 is revised to read as follows:

2409.507–1 Solicitation provisions.

The Contracting Officer shall insert a provision substantially the same as the provision at 48 CFR 2452.209–70, Potential Organizational Conflicts of Interest, in all solicitations over the simplified acquisition limitation when the Contracting Officer has reason to believe that a potential organizational conflict of interest exists. The Contracting Officer shall describe the nature of the potential conflict in the provision.

5. Section 2409.507–2 is revised to read as follows:

2409.507–2 Contract clauses.

The Contracting Officer shall insert a clause substantially the same as the clause at 48 CFR 2452.209–71, Limitation on Future Contracts, in all contracts above the simplified acquisition threshold. The Contracting Officer shall describe in the clause the nature of the potential conflict, and the negotiated terms and the duration of the limitation.

PART 2436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

6. The authority citation for part 2436 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

7. Paragraph (a)(2) of section 2436.602–2 is revised to read as follows:

2436.602–2 Evaluation boards.

(a) * * *

(2) The cognizant program office head for boards appointed at the field level.

* * * * *

8. Section 2436.602–4 is revised to read as follows:

2436.602–4 Selection authority.

(a) The final selection decision shall be made by the cognizant Primary Organization Head in headquarters, or field program office head.

PART 2439—ACQUISITION OF INFORMATION TECHNOLOGY

9. The authority citation for part 2439 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

10. In section 2439.107, a new paragraph (b) is added to read as follows:

2439.107 Contract clauses.

* * * * *

(b) The contracting officer shall insert the clause at 48 CFR 2452.239–71, Information Technology Virus Security, in solicitations and contracts under which the contractor will provide information technology hardware, software or data products.

PART 2442—CONTRACT ADMINISTRATION

11. The authority citation for part 2442 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

12. Section 2442.1106 is revised to read as follows:

2442.1106 Reporting requirements.

(a) All contracts for professional or technical services of a developmental or advisory nature exceeding $500,000 shall include a requirement for the use of systematic project planning and progress reporting. The Contracting Officer may require the use of such project planning and reporting systems for contracts below the above threshold.

13. Section 2442.1107 is revised to read as follows:

2442.1107 Contract clause.

The Contracting Officer shall insert a clause substantially the same as the clause at 48 CFR 2452.242–71, Project Management System, in solicitations and contracts for services as described in 2442.1106 expected to exceed $500,000. Use of this clause below the stated threshold is at the discretion of the Contracting Officer.

PART 2452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. The authority citation for part 2452 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2452.203–71 [Removed]

15. Section 2452.203–71 is removed.

16. Section 2452.209–70 is revised to read as follows:

2452.209–70 Potential organizational conflicts of interest.

As prescribed in 2409.507–1, the Contracting Officer may insert a provision substantially the same as follows in solicitations:

Potential Organizational Conflicts of Interest (* 1999)**

(a) The Contracting Officer has determined that the proposed contract contains a potential organizational conflict of interest. Offerors are directed to FAR subpart 9.5 for detailed information concerning organizational conflicts of interest.

(b) The nature of the potential conflict of interest is [*Contracting Officer insert description*]:

(c) Offerors shall provide a statement which describes concisely all relevant facts concerning any past, present or planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed under the proposed contract and bearing on whether the offeror has a possible organizational conflict of interest with respect to:

(1) Being able to render impartial, technically sound, and objective assistance or advice, or

(2) Being given an unfair competitive advantage. The offeror may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions or sections of the organization and how that structure or system would avoid or mitigate such organizational conflict.

(d) No award shall be made until any potential conflict of interest has been neutralized or mitigated to the satisfaction of the Contracting Officer.

(e) Refusal to provide the requested information or the willful misrepresentation of any relevant information by an offeror shall disqualify the offeror from further consideration for award of a contract under this solicitation.

(f) If the Contracting Officer determines that a potential conflict can be avoided, effectively mitigated, or otherwise resolved through the inclusion of a special contract clause, the terms of the clause will be subject to negotiation.

(End of provision)

17. Section 2452.209–71 is revised to read as follows:

2452.209–71 Limitation on future contracts.

As prescribed in 2409.507–2, the Contracting Officer may insert a clause substantially the same as follows in solicitations and contracts for services:

Limitation on Future Contracts (** 1999)**

(a) The Contracting Officer has determined that this contract may give rise to potential organizational conflicts of interest as defined at FAR subpart 9.5.

(b) The nature of the potential conflict of interest is [*Contracting Officer insert description*]:

(c) If the contractor, under the terms of this contract or through the performance of tasks pursuant to this contract, is required to develop specifications or statements of work that are to be incorporated into a solicitation, the contractor shall be ineligible to perform the work described in that solicitation as a prime or first-tier subcontractor under any ensuing HUD contract.

(d) Other restrictions—[*Contracting Officer insert description*]

(e) The restrictions imposed by this clause shall remain in effect until [*Contracting Officer insert period or date*].

(End of clause)

18. A new section 2452.239–71 is added to read as follows:

2452.239–71 Information technology virus security.

As prescribed in 2439.107(b), insert the following clause:

Information Technology Virus Security (**, 1999)**

(a) The contractor hereby agrees to make every reasonable effort to deliver information technology products to HUD free of known computer viruses. The contractor shall be responsible for examining all such products prior to their delivery to HUD using software tools and processes capable of detecting all known viruses.

(b) The contractor shall include the following statement on deliveries of hardware, software, and data products, including diskettes, made under this contract:

[product description, part/catalog number, other identifier, and serial number, if any]

''This product has been scanned for known viruses using [name of virus-screening product, including version number, if any] and is certified to be free of known viruses at the time of delivery.''

(c) The Contracting Officer may assess monetary damages against the contractor sufficient to compensate HUD for actual or estimated costs resulting from computer virus damage or malicious destruction of computer information arising from the contractor's failure to take adequate precautions to preclude delivery of virus-containing products in the delivery of hardware, software, or data on diskettes under this contract.

(d) This clause shall not subrogate the rights of the Government under any other clause of this contract.

(End of clause)

19. Section 2452.242–71 is revised to read as follows:

2452.242–71 Project management system.

As prescribed in 2442.1107, insert the following clause:

Project Management System (** 1999)**

(a) Within the time period specified elsewhere in this contract, or as directed by the Contracting Officer, the Contractor shall provide to the GTR and Contracting Officer a project management baseline plan and routine reports showing the Contractor's actual progress against the baseline plan.

(b) The project management system shall consist of two parts:

(1) *Baseline plan.* The baseline plan shall consist of—

(i) A narrative portion that:

(A) Identifies each task and significant activity required for completing the contract work, critical path activities, task dependencies, task milestones, and related deliverables;

(B) Describes the project schedule, including the period of time needed to accomplish each task and activity (see i(B));

(C) Describes staff (e.g., hours per individual), financial, and other resources allocated to each task and significant activity; and

(D) Provides the rationale for project organization and resource allocation.

(ii) A graphic portion showing:

(A) Cumulative planned or budgeted costs of work scheduled for each reporting period over the life of the contract; and

(B) The planned start and completion dates of all planned and budgeted tasks and activities.

(2) *Progress reports.* Progress reports shall consist of:

(i) A narrative portion that:

(A) Provides a brief, concise summary of technical progress made and the costs incurred for each task during the reporting period; and

(B) Identifies significant problems, or potential problems, their causes, proposed corrective actions, and the net effect on contract completion.

(ii) A graphic portion showing:

(A) The schedule status and degree of completion of the tasks, activities and deliverables shown in the baseline plan for the reporting period, including actual start and completion dates for all tasks and activities in the baseline plan;

(B) The costs incurred during the reporting period, the current total amount of costs incurred through the end date of the reporting period for budgeted work, and the projected costs required to complete the work under the contract.

(c) The formats, forms and/or software to be used for the project management system under this contract shall be [Contracting Officer insert appropriate language—''as prescribed in the schedule;'' ''a format, forms and/or software designated by the GTR;'' or, ''the contractor's own format, forms and/or software, subject to the approval of the GTR.'']

(End of clause)

PART 2453—FORMS

20. The authority citation for part 2453 continues to read as follows:

Authority: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2453.242–70 [Removed]

21. Section 2453.242–70 is removed.

2453.242–71 [Removed]

22. Section 2453.242–71 is removed.

Dated: June 7, 1999.

V. Stephen Carberry,

Chief Procurement Officer.

[FR Doc. 99–21078 Filed 8–20–99; 8:45 am]

BILLING CODE 4210–01–P

Federal Register

Monday
August 23, 1999

Part VI

Department of Housing and Urban Development

Competition Advocate Designation Under the HUD Acquisition Regulation; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4115–N–02]

Notice of Competition Advocate Designation Under the HUD Acquisition Regulation

AGENCY: Office of the Chief Procurement Officer.

ACTION: Notice of competition advocate designation.

SUMMARY: This notice designates the Senior Advisor to the Chief Procurement Officer as the HUD Competition Advocate in accordance with 48 CFR Chapter 24, section 2406.501.

EFFECTIVE DATE: This notice is effective August 23, 1999.

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Field Operations Division, Office of Procurement and Contracts, Room 5262, 451 Seventh Street, SW., Washington, DC 20410–3000 (voice (202) 708–0294, TTY (202) 708–1112). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The uniform regulation for the procurement of supplies and services by Federal departments and agencies, the Federal Acquisition Regulation (FAR), was promulgated on September 19, 1983 (48 FR 42102). The FAR is codified in title 48, chapter 1, of the Code of Federal Regulations. HUD promulgated its regulation to implement the FAR on March 1, 1984 (49 FR 7696).

The HUDAR (title 48, chapter 24 of the Code of Federal Regulations) is prescribed by the Chief Procurement Officer under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)); section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); the Secretary's delegation effective October 6, 1998 (63 FR 54723); and the general authorization in FAR 1.301.

In accordance with HUDAR 2406.501, designation of HUD's Competition Advocate shall be made through a notice published in the **Federal Register**. Recently, HUD underwent a Departmental reorganization that included the relocation of all of its procurement activity from the Office of the Assistant Secretary for Administration to the Office of the Chief Procurement Officer. Therefore, the purpose of this notice is to redesignate the Departmental Competition Advocate to a position within the Office of the Chief Procurement Officer. Accordingly, the Chief Procurement Officer designates the Senior Advisor to the Chief Procurement Officer as the HUD Competition Advocate.

Dated: July 16, 1999.

V. Stephen Carberry,

Chief Procurement Officer.

[FR Doc. 99–21076 Filed 8–20–99; 8:45 am]

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- Eurocopter Deutschland; comments due by 8-30-99; published 7-1-99
- Eurocopter France; comments due by 8-30-99; published 6-29-99
- Fokker; comments due by 8-31-99; published 8-6-99
- Lockheed; comments due by 8-30-99; published 7-14-99
- McDonnell Douglas; comments due by 8-30-99; published 7-14-99
- Overland Aviation Services; comments due by 9-3-99; published 7-12-99
- Precise Flight, Inc.; comments due by 8-30-99; published 7-7-99
- Short Brothers; comments due by 9-3-99; published 8-4-99
- Stemme GmbH & Co. KG; comments due by 8-30-99; published 7-21-99

Class E airspace; comments due by 8-30-99; published 7-13-99

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Motor carrier safety standards:
- Inspection, repair, and maintenance—
  - Intermodal container chassis and trailers; comments due by 8-30-99; published 5-5-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 211/P.L. 106–48

To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the ''Thomas S. Foley United States Courthouse'', and the plaza at the south entrance of such building and courthouse as the ''Walter F. Horan Plaza''. (Aug. 17, 1999; 113 Stat. 230)

H.R. 1219/P.L. 106–49

Construction Industry Payment Protection Act of 1999 (Aug. 17, 1999; 113 Stat. 231)

H.R. 1568/P.L. 106–50

Veterans Entrepreneurship and Small Business Development Act of 1999 (Aug. 17, 1999; 113 Stat. 233)

H.R. 1664/P.L. 106–51

Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act of 1999 (Aug. 17, 1999; 113 Stat. 252)

H.R. 2465/P.L. 106–52

Military Construction Appropriations Act, 2000 (Aug. 17, 1999; 113 Stat. 259)

S. 507/P.L. 106–53

Water Resources Development Act of 1999. (Aug. 17, 1999; 113 Stat. 269)

S. 606/P.L. 106–54

For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106–55

To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

Last List August 18, 1999

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–034–00001–1)	5.00	[5] Jan. 1, 1999
3 (1997 Compilation and Parts 100 and 101)	(869–038–00002–4)	20.00	[1] Jan. 1, 1999
4	(869–034–00003–7)	7.00	[5] Jan. 1, 1999
5 Parts:			
1–699	(869–038–00004–1)	37.00	Jan. 1, 1999
700–1199	(869–038–00005–9)	27.00	Jan. 1, 1999
1200–End, 6 (6 Reserved)	(869–038–00006–7)	44.00	Jan. 1, 1999
7 Parts:			
1–26	(869–038–00007–5)	25.00	Jan. 1, 1999
27–52	(869–038–00008–3)	32.00	Jan. 1, 1999
53–209	(869–038–00009–1)	20.00	Jan. 1, 1999
210–299	(869–038–00010–5)	47.00	Jan. 1, 1999
300–399	(869–038–00011–3)	25.00	Jan. 1, 1999
400–699	(869–038–00012–1)	37.00	Jan. 1, 1999
700–899	(869–038–00013–0)	32.00	Jan. 1, 1999
900–999	(869–038–00014–8)	41.00	Jan. 1, 1999
1000–1199	(869–038–00015–6)	46.00	Jan. 1, 1999
1200–1599	(869–038–00016–4)	34.00	Jan. 1, 1999
1600–1899	(869–038–00017–2)	55.00	Jan. 1, 1999
1900–1939	(869–038–00018–1)	19.00	Jan. 1, 1999
1940–1949	(869–038–00019–9)	34.00	Jan. 1, 1999
1950–1999	(869–038–00020–2)	41.00	Jan. 1, 1999
2000–End	(869–038–00021–1)	27.00	Jan. 1, 1999
8	(869–038–00022–9)	36.00	Jan. 1, 1999
9 Parts:			
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1–50	(869–038–00025–3)	42.00	Jan. 1, 1999
51–199	(869–038–00026–1)	34.00	Jan. 1, 1999
200–499	(869–038–00027–0)	33.00	Jan. 1, 1999
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11	(869–038–0002–6)	20.00	Jan. 1, 1999
12 Parts:			
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200–219	(869–038–00031–8)	20.00	Jan. 1, 1999
220–299	(869–038–00032–6)	40.00	Jan. 1, 1999
300–499	(869–038–00033–4)	25.00	Jan. 1, 1999
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140–199	(869–038–00039–3)	17.00	Jan. 1, 1999
200–1199	(869–038–00040–7)	28.00	Jan. 1, 1999
1200–End	(869–038–00041–5)	24.00	Jan. 1, 1999
15 Parts:			
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800–End	(869–038–00044–0)	24.00	Jan. 1, 1999
16 Parts:			
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240–End	(869–038–00050–4)	44.00	Apr. 1, 1999
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20 Parts:			
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400–499	(869–038–00057–1)	51.00	Apr. 1, 1999
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21 Parts:			
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100–169	(869–038–00060–1)	28.00	Apr. 1, 1999
170–199	(869–038–00061–0)	29.00	Apr. 1, 1999
200–299	(869–038–00062–8)	11.00	Apr. 1, 1999
300–499	(869–038–00063–6)	50.00	Apr. 1, 1999
500–599	(869–038–00064–4)	28.00	Apr. 1, 1999
600–799	(869–038–00065–2)	9.00	Apr. 1, 1999
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1300–End	(869–038–00067–9)	14.00	Apr. 1, 1999
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300–End	(869–038–00069–5)	32.00	Apr. 1, 1999
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24 Parts:			
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*200–499	(869–038–00072–5)	32.00	Apr. 1, 1999
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1700–End	(869–038–00075–0)	18.00	Apr. 1, 1999
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26 Parts:			
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§§ 1.61–1.169	(869–038–00078–4)	50.00	Apr. 1, 1999
§§ 1.170–1.300	(869–038–00079–2)	34.00	Apr. 1, 1999
§§ 1.301–1.400	(869–038–00080–6)	25.00	Apr. 1, 1999
§§ 1.401–1.440	(869–038–00081–4)	43.00	Apr. 1, 1999
§§ 1.441-1.500	(869-038-00082-2)	30.00	Apr. 1, 1999
§§ 1.501–1.640	(869–038–00083–1)	27.00	[7] Apr. 1, 1999
§§ 1.641–1.850	(869–038–00084–9)	35.00	Apr. 1, 1999
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§§ 1.908–1.1000	(869–038–00086–5)	38.00	Apr. 1, 1999
§§ 1.1001–1.1400	(869–038–00087–3)	40.00	Apr. 1, 1999
§§ 1.1401–End	(869–038–00088–1)	55.00	Apr. 1, 1999
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50–299	(869–038–00092–0)	21.00	Apr. 1, 1999
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500–599	(869–038–00094–6)	11.00	Apr. 1, 1999
600–End	(869–038–00095–4)	11.00	Apr. 1, 1999
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1–199	(869–038–00096–2)	53.00	Apr. 1, 1999

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*200–End	(869–038–00097–1)	17.00	Apr. 1, 1999
28 Parts:			
0-42	(869–034–00098–3)	36.00	July 1, 1998
43-end	(869-034-00099-1)	30.00	July 1, 1998
29 Parts:			
0–99	(869–034–00100–9)	26.00	July 1, 1998
*100–499	(869–038–00101–2)	13.00	July 1, 1999
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1927–End	(869–034–00108–4)	41.00	July 1, 1998
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200–699	(869–034–00110–6)	29.00	July 1, 1998
700–End	(869–034–00111–4)	33.00	July 1, 1998
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*0–199	(869–038–00112–8)	21.00	July 1, 1999
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1–190	(869–034–00114–9)	47.00	July 1, 1998
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800–End	(869–034–00119–0)	27.00	July 1, 1998
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125–199	(869–034–00121–1)	38.00	July 1, 1998
200–End	(869–034–00122–0)	30.00	July 1, 1998
34 Parts:			
1–299	(869–034–00123–8)	27.00	July 1, 1998
300–399	(869–034–00124–6)	25.00	July 1, 1998
400–End	(869–034–00125–4)	44.00	July 1, 1998
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200–299	(869–034–00128–9)	21.00	July 1, 1998
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40 Parts:			
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52 (52.1019–End)	(869–034–00137–8)	33.00	July 1, 1998
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400–424	(869–034–00153–0)	33.00	July 1, 1998
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41 Chapters:			
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1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
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1–199	(869–034–00167–0)	30.00	Oct. 1, 1998
200–499	(869–034–00168–8)	18.00	Oct. 1, 1998
500–1199	(869–034–00169–6)	29.00	Oct. 1, 1998
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46 Parts:			
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41–69	(869–034–00172–6)	21.00	Oct. 1, 1998
70–89	(869–034–00173–4)	8.00	Oct. 1, 1998
90–139	(869–034–00174–2)	26.00	Oct. 1, 1998
140–155	(869–034–00175–1)	14.00	Oct. 1, 1998
156–165	(869–034–00176–9)	19.00	Oct. 1, 1998
166–199	(869–034–00177–7)	25.00	Oct. 1, 1998
200–499	(869–034–00178–5)	22.00	Oct. 1, 1998
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47 Parts:			
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50 Parts:			
1–199	(869–034–00199–8)	42.00	Oct. 1, 1998
200–599	(869–034–00200–5)	22.00	Oct. 1, 1998
600–End	(869–034–00201–3)	33.00	Oct. 1, 1998

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869–038–00047–4)	48.00	Jan. 1, 1999
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[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 July 1, 1997 to June 30, 1998. The volume issued July 1, 1997, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.