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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[FV-89-012]

Irish Potatoes Grown in Colorado Area 2; Reduction in Minimum Size Requirement for Certain Long Varieties

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule reduces the minimum size requirement for certain long potato varieties from 2 inches to 1⅞ inches in diameter. This action is expected to foster increased consumption and have a positive impact on the industry.

DATES: Interim rule effective January 11, 1989; comments which are received by February 10, 1989, will be considered prior to issuance of the final rule.

ADDRESS: Interested persons are invited to submit written comments concerning this action. Comments should be sent to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Todd A. Delello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 475-5160.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948 (7 CFR Part 948), both as amended, regulating the handling of Irish potatoes grown in designated counties of Colorado Area No. 2. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This interim final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

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

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

There are approximately 120 handlers of Colorado Area 2 potatoes subject to regulation under the marketing order, and approximately 290 potato producers in the San Luis Valley (Area 2) of Colorado. The Small Business Administration [13 CFR 121.2] has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Colorado potatoes may be classified as small entities.

The San Luis Valley Potato Administrative Committee Area 2 estimated that shipments during the 1987-88 season totaled 29,685 loads at about 480 hundredweight (cwt.) per load. Of the total, about 97 percent or 13,884,416 cwt., entered the fresh market and three percent (364,339 cwt.) was shipped to processors.

The breakdown of shipments by variety was about 69.6 percent Centennial Russets, about 23.6 percent Russet Burbanks, about 6.7 percent reds, and about 0.2 percent other varieties.

One percent of the fresh movement was seed potatoes. The grade composition of the remaining fresh shipments was 63 percent U.S. No. 1, 21 percent U.S. Commercial, 13 percent U.S. No. 2, and two percent U.S. No. 1/Size B.

The handling requirements for fresh market shipments of Colorado Area 2 potatoes are specified in § 948.386 [53 FR 8146, March 14, 1988] and, with the exception of the maturity requirements, are in effect all year long. Currently, round variety potatoes must grade at least U.S. No. 2 and be at least 2⅛ inches in diameter. Russet Burbank potatoes must grade at least U.S. No. 2 and be at least 1⅞ inches in diameter. All other long varieties must be U.S. No. 2 or better grade and 2 inches minimum diameter or 4 ounces minimum weight. All varieties of potatoes may be Size B if they otherwise grade U.S. No. 1. Size B potatoes have a minimum diameter of 1½ inches and a maximum diameter of 2¼ inches. All varieties of potatoes being exported must be at least 1½ inches in diameter. Maturity requirements during the period August 25 through October 31 specify that potatoes grading U.S. No. 2 cannot be more than "moderately skinned," and potatoes grading other than U.S. No. 2 cannot be more than "slightly skinned."

This interim final rule reduces the minimum size requirement for long variety potatoes, except for the Centennial Russet and Russet Burbank varieties, from 2 to 1⅞ inches in diameter. This change was unanimously recommended by the San Luis Valley Potato Administrative Committee Area 2.

Until recently, virtually all long type potatoes grown in the production area were either of the Russet Burbank or Centennial Russet variety. Because these two varieties have different physical characteristics, different size requirements were established for each. The Russet Burbank, which is longer and thinner than the Centennial Russet, is required to be at least 1⅞ inches in diameter. Other long varieties, including the Centennial Russet, are currently required to be at least 2 inches in diameter.

This year, a number of new varieties of long potatoes were planted in the San

Luis Valley, including the Russet Norkotah, Russet Nugget, Nooksack, and Targhee. During harvest of the crop, it was found that these other long varieties are more similar in size and shape to the Russet Burbank than the Centennial Russet. The committee therefore recommended that these varieties be subject to the 1⅞-inch minimum diameter size requirement established for Russet Burbanks rather than the 2-inch minimum set for other long varieties.

The industry estimates that absent this change, about 15 to 18 percent of these new variety potatoes would be precluded from being shipped to fresh outlets. This action is therefore expected to increase the amount of marketable potatoes and improve returns to growers. This change is not expected to adversely affect the market for larger potatoes.

Section 8e of the Act requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports then must meet the quality standards set for that particular area.

Because the current import regulation [§ 980.1], specifies that import requirements for long types be based on those in effect for potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon [7 CFR Part 945] during each month of the marketing year, this change in the handling regulation for Colorado Area 2 potatoes will not affect potato import requirements.

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

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the act.

Pursuant to 5 U.S.C. 533, it is also found and determined upon good cause that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** for the following reasons: (1) Shipments of long variety potatoes have begun, and this relaxation of requirements should apply to as many shipments as possible; (2) potato handlers are aware of this action which was unanimously recommended by the committee at a public meeting, and they will not need additional time to comply with the changed requirements; and (3) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to the finalization of the rule.

List of Subjects in 7 CFR Part 948

Marketing agreements and orders, Potatoes, Colorado.

For the reasons set forth in the preamble, 7 CFR Part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR Part 948 continues to read as follows:

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

2. Section 948.386 is amended by revising paragraphs (a)(2) and (a)(3) to read as follows:

NOTE:—[This section will appear in the Code of Federal Regulations]:

§ 948.386 Handling regulations.

(a) * * *

(2) Centennial Russet. U.S. No. 2, or better grade, 2 inches minimum diameter or 4-ounce minimum weight.

(3) All other long varieties. U.S. No. 2, or better grade, 1⅞ inches minimum diameter.

* * * * *

Dated: January 6, 1989.

Robert C. Kenney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–532 Filed 1–10–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 985

[FV–88–129 FR]

Spearmint Oil Produced in the Far West; Revision of the Salable Quantities and Allotment Percentages for "Class 1" (Scotch) and "Class 3" (Native) Spearmint Oils for the 1988–89 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is adopting without modification as a final rule, the provisions of an interim final rule which increased the quantities of "Class 1" (Scotch) and "Class 3" (Native) spearmint oils produced in the Far West that may be purchased from, or handled for, producers by handlers during the 1988–89 marketing year which began June 1, 1988. This action is taken under the marketing order for spearmint oil produced in the Far West to promote orderly marketing conditions and was recommended by the Spearmint Oil Administrative Committee, the agency responsible for local administration of the order.

EFFECTIVE DATE: June 1, 1988, through May 31, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, F&V, AMS, USDA, Room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–5120.

SUPPLEMENTARY INFORMATION:

This final rule is issued under Marketing Order No. 985 (7 CFR Part 985), as amended, regulating the handling of spearmint oil produced in the Far West. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

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

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

There are approximately nine handlers of Far West spearmint oil subject to regulation under the spearmint oil marketing order, and approximately 253 spearmint oil producers in the regulated area. Of the 253 producers, 170 producers hold

"Class 1" oil (Scotch) allotment base and 143 producers hold "Class 3" oil (Native) allotment base. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Far West spearmint oil may be classified as small entities.

The Spearmint Oil Administrative Committee (Committee), at its August 10, 1988, meeting, unanimously recommended that the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1988–89 marketing year be increased. The 1988–89 salable quantities and allotment percentages for those classes of oil were first published in a final rule in the March 1, 1988, issue of the Federal Register (53 FR 6129). Subsequently, an interim final rule increasing the salable quantity and allotment percentage for Scotch spearmint oil for the 1988–89 marketing year was published in the August 18, 1988, issue of the Federal Register (53 FR 31281). Comments on this interim final rule were to be received by September 19, 1988. No comments were received. That interim final rule increased the 1988–89 salable quantity for Scotch spearmint oil from 650,131 to 766,387 pounds and the allotment percentage from 39 to 46 percent.

An interim final rule, modifying the August 18, 1988, interim final rule by increasing the salable quantity of Scotch spearmint oil from 766,387 to 883,011 pounds and increasing the allotment percentage from 46 to 53 percent, was published in the September 30, 1988, issue of the Federal Register (53 FR 38281). In addition, that interim final rule increased the salable quantity of Native spearmint oil from 701,077 to 793,143 pounds and increased the allotment percentage form 38 to 43 percent. Those revisions were issued pursuant to § 985.51(b) of the spearmint oil marketing order.

The salable quantity is the total quantity of a class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage (which is the salable quantity multiplied by 100 divided by the total of all allotment bases) to the producer's allotment base for that class of oil.

At its August 12, 1987, meeting, the Committee estimated trade demand for Scotch spearmint oil for the 1988–89 marketing year to be 761,063 pounds. A desirable carry-out figure of 0 pounds was adopted and, when added to the trade demand, resulted in a total supply needed of 761,063 pounds. The Committee estimated that 15,703 pounds would be carried-in on June 1, 1988. This amount was deducted from the total supply needed leaving 745,360 pounds as the salable quantity needed. This figure was further reduced by 100,000 pounds which was the amount of Far West Scotch sales estimated to be filled by production from outside the production area (South Dakota). This left a salable quantity needed of 645,360 pounds. This quantity, divided by the total of all allotment bases of 1,667,002 pounds, resulted in 38.7 percent which was the computed allotment percentage. This figure was adjusted to 39 percent and established as the 1988–89 Scotch allotment percentage which resulted in a 1988–89 salable quantity of 650,131 pounds.

At the time of the July 6, 1988, Committee meeting, the 1988–89 salable percentage of 39 percent, when applied to the then current total allotment base of 1,666,059 pounds, gave a 1988–89 salable quantity of 649,763 pounds. Since all growers either produced their individual salable quantity or filled any deficiencies with reserve pool oil, the total salable quantity which was available, when this figure was combined with the actual carry-in on June 1, 1988, was 683,644 pounds, and was the total supply available for the 1988–89 marketing year. Carry-in on June 1, 1988, was 33,881 pounds of Scotch oil, higher than the Committee had estimated.

The Committee, at its July 6, 1988, meeting, recommended increasing the salable percentage by 7 percent, from 39 to 46 percent, thus making an additional 116,624 pounds available to the market. The basis for this recommendation was that when these additional pounds are added to the total supply available of 683,644 pounds, the resulting 800,268 pounds is between the five-year average sales of 758,682 pounds and the highest year of sales of 868,242 pounds. The Committee decided that this figure could meet immediate needs while assuring growers that a burdensome supply would not be put on the market. The Committee therefore recommended that the 1988–89 Scotch salable percentage be increased from 39 to 46 percent resulting in an increase in the salable quantity from 650,101 to 766,387 pounds. This figure added to the June 1, 1988, carry-in of 33,881 pounds resulted in a total available supply of 800,268 pounds. Thus, the interim final rule published in the August 18, 1988, issue of the Federal Register (53 FR 31281) increased the salable quantity for Scotch spearmint oil from 650,101 to 766,387 pounds and increased the allotment percentage from 39 to 46 percent.

Estimates at the time of the July 6, 1988, Committee meeting indicated that a maximum of 50 percent of a normal crop would be harvested in the Mideast this year. The demand for Far West Scotch oil has increased as buyers of Midwest Scotch oil substituted Far West oil for Midwest oil. A considerable amount of contracting of the 1988–89 crop, including the additional quantity of Scotch oil recommended at the July 6, 1988, meeting, has occurred. In order to meet the anticipated increase in trade demand, a higher salable quantity and allotment percentage for Scotch oil were required.

At their August 10, 1988, meeting, the Committee unanimously voted to make more Scotch spearmint oil available to the market by increasing the salable quantity and allotment percentage. The Committee therefore recommended that the 1988–89 Scotch salable percentage be increased from 46 to 53 percent resulting in an increase in the salable quantity from 766,387 to 883,011 pounds. This figure, added to the June 1, 1988, carry-in of 33,881 pounds, resulted in a total available supply of 916,892 pounds. The following table summarizes the computations used in arriving at the Committee's recommendations.

[In pounds]

	Recommendation Aug. 12, 1987	Recommendation July 6, 1988	Recommendation Aug. 10, 1988
(1) Carry-in	15,703	33,881	33,881
(2) Quantity available	665,834	800,268	916,892
(3) Desirable carryout	0	0	0
(4) Salable quantity[1]	645,360	766,387	883,011
(5) Total allotment bases for Scotch oil	1,667,002	1,666,059	1,666,059
(6) Allotment percentage (4/5 × 100)	39	46	53
(7) Adjusted salable quantity	650,101	766,387	883,011

[1] Salable quantity equals trade demand minus carry-in and minus an additional 100,000 pounds of Scotch oil expected to be available from South Dakota, which is outside the production area.

Thus, the Department determined an allotment percentage of 53 percent should be established for Scotch spearmint oil for the 1988–89 marketing

year. This percentage made available 916,892 pounds of Far West Scotch spearmint oil to handlers of Far West spearmint oil.

In addition, at its August 12, 1987, meeting, the Committee estimated trade demand for Native spearmint oil for the 1988–89 marketing year to be 750,000 pounds. A desirable carry-out figure of 0 pounds was adopted and, when added to the trade demand, resulted in a total supply needed of 750,000 pounds. The Committee estimated that 50,000 pounds would be carried-in on June 1, 1988. This amount was deducted from the total supply needed leaving 700,000 pounds as the salable quantity needed. This quantity, divided by the total of all allotment bases of 1,844,940 pounds, resulted in 37.9 percent which was the computed allotment percentage. This figure was adjusted to 38 percent and established as the 1988–89 Native allotment percentage which resulted in a 1988–89 salable quantity of 701,077 pounds based on the estimated total base of 1,844,940 pounds.

The 1988–89 salable percentage of 38 percent, when applied to the revised total allotment base of 1,841,330 pounds, gave a 1988–89 salable quantity of 699,705 pounds. Since all growers will either produce their individual salable quantity or fill any deficiencies with reserve pool oil, the total salable quantity which will be available, when this figure is combined with the actual carry-in on June 1, 1988, is 703,107 pounds, and is the total supply available for the 1988–89 marketing year. Carry-in on June 1, 1988, was 3,402 pounds of Native oil, which was lower than the Committee had estimated.

Extensive surveys of growers and buyers led the Committee to an estimate of 610,479 pounds as the amount of the 1988–89 total available supply that was committed to the market. This was the highest amount that has been sold or committed to be sold at that time of the year. When the estimated amount that is committed to the market of 610,479 pounds is deducted from the total supply available of 703,107 pounds, the result of 92,628 pounds is the amount that is currently available to the market. This was considered by the Committee to be less than is desirable for this early in the marketing year. In order to meet the anticipated increase in trade demand, a higher salable quantity and allotment percentage for Native oil was required. The Committee recommended increasing the salable percentage by 5 percent, from 38 to 43 percent, thus making an additional 92,067 pounds (0.05×1,841,330 pounds which is the current total allotment bases for Native oil) available to the market. The Committee decided that this figure could meet immediate needs while assuring growers that a burdensome supply would not be put on the market. The Committee therefore recommended that the 1988–89 Native salable percentage be increased from 38 to 43 percent resulting in an increase in the salable quantity from 699,705 to 791,772 pounds. This figure added to the June 1, 1988, carry-in of 3,402 pounds resulted in a total available supply of 795,174 pounds. The following table summarizes the computations used in arriving at the Committee's recommendations.

[In pounds]

	Recommendation Aug. 12, 1987	Recommendation Aug. 10, 1988
(1) Carry-in	50,000	3,402
(2) Quantity available	750,000	795,174
(3) Desirable carryout	0	0
(4) Salable quantity	701,077	791,772
(5) Total allotment bases for Native oil	1,844,940	1,841,330
(6) Allotment percentage (% × 100)	38	43

Thus, the Department determined an allotment percentage of 43 percent should be established for Native spearmint oil for the 1988–89 marketing year. This percentage made available 795,174 pounds of Far West Native spearmint oil to handlers of Far West spearmint oil.

An interim final rule establishing those allotment percentages and salable quantities was issued on September 26, 1988, and was published in the **Federal Register** on September 30, 1988 (53 FR 38281). Comments were solicited from interested persons through October 31, 1988. No comments were received. Thus the allotment percentages and salable quantities as established by that interim final rule are adopted without change.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including that contained in the final rule published in the March 1, 1988, issue of the **Federal Register** (53 FR 6129) and the interim final rule published in the August 18, 1988, issue of the **Federal Register** (53 FR 31281), in connection with the initial establishment of the salable quantities and allotment percentage for Scotch and Native spearmint oils, the Committee's recommendation and other information, it is found that to amend § 985.208 (53 FR 6129) so as to change the salable quantities and allotment percentages for Scotch and Native spearmint oils, as set forth below, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relieves restrictions on handlers by increasing the quantities of Scotch and Native spearmint oils that may be marketed for the 1988–89 marketing year; (2) it should be effective as soon as possible to enable handlers to satisfy current market needs for Scotch and Native spearmint oils; and (3) this final rule adopts the provisions of the interim rule without modification.

List of Subjects in 7 CFR Part 985

Far West, Marketing agreements and orders, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

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

§ 985.208 [Amended]

2. Accordingly, the interim final rule amending § 985.208, which was published at 53 FR 38281 on September 30, 1988, is adopted as a final rule without change.

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

Dated: January 6, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–533 Filed 1–10–89; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1479

Forage Assistance Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts, with a revision of § 1479.6(c), with respect to eligible costs for which cost-sharing is

authorized and minor changes for clarity, the interim rule published in the **Federal Register** on October 21, 1988, at 53 FR 41309 for the Forage Assistance Program (FAP) provided for in section 103 of the Disaster Assistance Act of 1988 (Pub. L. 100-387).

DATE: The effective date of this final rule is January 11, 1989.

FOR FURTHER INFORMATION CONTACT: James R. McMullen, Director, Conservation and Environmental Protection Division, ASCS, P.O. Box 2415, Washington, DC 20013; telephone: 202-447-6221.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed for compliance with Executive Order 12291 and Department Regulation 1512-1 and has been classified as "nonmajor". It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Title—Forage Assistance Program; Number—10.FAP; as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule-making with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant adverse impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed. Copies of the environmental evaluation are available upon written request.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

An interim rule, published in the **Federal Register** on October 21, 1988 (53 FR 41309), set forth the terms and conditions for the conduct of the Forage Assistance Program (FAP) provided for in section 103 of the Disaster Assistance Act of 1988 (the 1988 Act) (Pub. L. 100-387). No comments were received with respect to this rule. The interim rule is adopted as a final rule except for revisions in § 1479.6(c) and corrections of minor typographical or organizational errors.

Section 1479.6(c) has been revised to remove the requirement that the costs be "paid" by the eligible person to be considered "incurred" for FAP purposes. This will permit billing by third persons to suffice and will permit compensation for the eligible person's own labor and related costs. Section 1479.6(c) has been revised in two other respects as well. As revised, it is specifically provided that eligible costs must be "reasonable" and, unless otherwise approved by the Agricultural Stabilization and Conservation Service, the practice or activity for which the costs were incurred must have been completed. These revisions will allow for full compensation within the limits of the 1988 Act. They will also avoid unnecessary public expense.

List of Subjects in 7 CFR Part 1479

Administrative practices and procedures, Agreements, Forage, Reseeding established pasture, Cost-share assistance, and Drought damage.

Final Rule

Accordingly, the interim rule amending 7 CFR Part 1479 which was published at 53 FR 41309-41312 on October 21, 1988, is adopted as a final rule with the following changes:

PART 1479—FORAGE ASSISTANCE PROGRAM

1. The authority citation for Part 1479 continues to read as follows:

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); sec. 103 of the Disaster Assistance Act of 1988, 102 Stat. 932 (7 U.S.C. 1471d *note*).

§ 1479.6 [Amended]

2. Section 1479.6(a) is amended by adding, in the second sentence, a comma after "and labor" and a comma after "county committee".

3. Section 1479.6(c) is revised to read as follows:

* * * * *

(c) Eligible costs shall only include reasonable costs which have been incurred for which the eligible person has presented adequate documentation and, except as otherwise authorized by DASCO, shall not include costs for a practice or activity which has not been completed.

4. Section 1479.6(f) is amended by changing "(i)" to "(1)".

§ 1479.7 [Amended]

5. Section 1479.7(c) is amended by removing the last sentence of that paragraph; by redesignating that paragraph as "(c)(1)"; by changing "(1)", "(2)", "(3)", and "(4)", to read "(i)", "(ii)", "(iii)", and "(iv)", respectively; and, by adding a new paragraph, (c)(2), to read as follows:

(2) Federal, State and local governments and agencies and political subdivisions thereof, shall not be considered to be eligible persons for purposes of this part.

§ 1479.8 [Amended]

6. Section 1479.8 is amended by, in paragraph (a), changing "Application for" to "Application for a"; and, in paragraph (b)(3), by adding a comma after "designee".

Signed at Washington, DC on January 6, 1989.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-592 Filed 1-10-89; 8:45 am]

BILLING CODE 3410-05-M

Farmers Home Administration

7 CFR Part 1951

Implementation of Internal Revenue Service Offset

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to establish procedures for referring to the Secretary of the Treasury delinquent amounts owed to FmHA for collection by offset against Federal income tax refunds. The intended effect is to strengthen the ability of FmHA to collect delinquent debts.

EFFECTIVE DATE: January 11, 1989.

ADDRESS: The collection of information requirements contained in this rule will be submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit any comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 22053.

FOR FURTHER INFORMATION CONTACT: Bob Nelson, Management Analyst, telephone (202) 475–4705, Farmers Home Administration, U.S. Department of Agriculture, Room 5505, South Agriculture Building, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "non-major." It will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

FmHA is amending Subpart C of Part 1951 of Title 7 of the Code of Federal Regulations to establish procedures to be followed to implement the authority for Federal agencies to refer debts to the Department of the Treasury for collection by offset against tax refunds owed to individuals. Tax refund offset is authorized by 31 U.S.C. 3720A and Treasury regulations at 26 CFR 301.6402–6T. Due to the lack of permanent legislation allowing IRS offset, FmHA has not published a permanent rule in the past. However, tax refund offset has recently been extended for three years and FmHA plans to participate this year.

Implementation of the tax refund offset initiative in 1988–1989 through regulations is essential to effective Federal debt collection. The IRS has established a deadline of January 1, 1989, for referral of debts to be collected by offset against tax refunds. By that date, FmHA must have provided each debtor whose account FmHA proposes to refer to the IRS with a notice of proposed offset, and a period of at least 60 days within which to submit evidence regarding that debt. To complete this process before January 1, 1989, notices must be sent before November 1, 1988. Thus, unless deadlines and other procedural rules applicable to tax refund offset are established before the commencement of the upcoming tax refund season, there is a significant likelihood of substantial loss to the Government.

FmHA is promulgating this regulation on a final basis in order to establish procedures applicable to the collection of debts by tax refund offset. Publication of these regulations on a final basis is permissible under the exemption from rulemaking requirements in 5 U.S.C. 553(b)(A) as a rule of agency procedure. In addition, for the reasons set forth above, FmHA has determined that there is an immediate need for procedures governing tax refund offsets.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969 Pub. L. 91–190, an Environmental Impact Statement is not required.

The collection of information requirements contained in this rule, specifically the requirement that borrowers produce documents to demonstrate that a debt is not owed or is not subject to offset, will be submitted to OMB for review. We estimate that 600 borrowers will submit such documentation and the time required will be 15 minutes per borrower, a total of 150 hours.

This activity is listed in the Catalog of Federal Domestic Assistance under (No. 10.410) Low Income Housing Loans (section 502 Rural Housing Loans). For the reasons set forth in the Final Rule and related Notice(s) to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983), this activity is excluded from the scope of Executive Order 12372 requiring intergovernmental consultation with State and local officials.

FmHA amends its regulations to establish procedures the Agency will follow to implement the authority for Federal agencies to refer delinquent amounts to the Department of the Treasury for collection by offset against tax refunds owed to named persons. (See 31 U.S.C. 3720A). Under this authority, the Internal Revenue Service (IRS) may collect debts referred by Federal agencies through offset against refunds that would otherwise be made to delinquent debtors.

IRS regulations require that debts be reported to a credit bureau before referral for offset. FmHA will publish a regulation permitting credit bureau reporting of borrowers before referral to IRS.

List of Subjects in 7 CFR Part 1951

Account servicing, Accounting, Credit, Loan Programs—Agriculture, Low and moderate income housing loans—Servicing.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23 & 7 CFR 2.70.

Subpart C—Offset of Federal Payments to FmHA Borrowers

2. Subpart C is amended by adding §§ 1951.121 through 1951.127 to read as follows:

§ 1951.121 Internal Revenue Service (IRS) offset.

The IRS can reduce a taxpayer's overpayment of tax by the amount of any legally enforceable debt owed to a Federal agency. This subpart establishes procedures to implement IRS offsets. Borrowers referred to IRS for offset will continue to be serviced as required by § 1951.312 of Subpart G of Part 1951 of this chapter.

§ 1951.122 Finance Office screening.

The FmHA Finance Office will perform an initial computer screening to identify accounts potentially eligible for IRS offset. FmHA field offices will further screen these accounts based on the eligibility criteria. The Finance Office will determine the appropriate date for this screening based on IRS deadlines. All overdue accounts except those in one or more of the following categories are potentially eligible for IRS offset:

(a) Account is less than 3 monthly payments overdue (or, for annual payment borrowers, the equivalent of less than 3 monthly payments overdue) or more than 9 years delinquent.

(b) Account has a bankruptcy action pending (BAP).

(c) Account has a foreclosure action pending (FAP).

(d) Account has a transfer pending (TP).

(e) Account has a voluntary conveyance pending.

(f) Account has been accelerated.

(g) Account is subject to approved adjustment (SAA).

(h) Account has a current moratorium.

(i) Account has a suspend code.

(j) Account is overdue by less than $25.

(k) Account has a total unpaid balance (principal and interest) that is less than $100.

(l) Account has been referred to a collection agency, returned from a

collection agency or coded collection only.

(m) Account has a loan that is ahead of schedule and the net amount overdue is less than 3 monthly payments, or the equivalent of 3 monthly payments for annual payment borrowers.

(n) Account has an Additional Payment Agreement (APA) in effect and payments under the APA are less than 3 months overdue.

(o) Borrower is a Federal employee, a member of the active reserve, or an employee of the U.S. Postal Service. IRS regulations require salary offset to be used against these individuals in lieu of IRS offset.

(p) Account is eligible for debt settlement. The County Office will immediately initiate debt settlement in accordance with Subpart B of Part 1956 of this chapter.

(q) Borrower has been discharged in bankruptcy but has not reaffirmed debt.

§ 1951.123 Field office screening.

Accounts determined by computer screening in the Finance Office to be potentially eligible will be referred to the IRS and to the appropriate FmHA County Office for review. If the County Office is aware that any account should be removed for any of the above reasons, the County Office will remove the account in accordance with the instructions accompanying the list. Borrowers who are removed by the County Office will not receive an offset letter, and no further action is necessary concerning borrowers removed. The Finance Office will remove those accounts identified as ineligible by County Offices and provide this information to IRS in accordance with IRS deadlines and procedures.

§ 1951.124 Notice to borrowers.

The Finance Office will send FmHA Form Letter 1951–6 to each borrower who still appears to be eligible for IRS offset after County Office screening and a computer screening using the latest account information that is available. This letter must be mailed to ensure that borrowers receive their letters no later than November 1. Borrowers will have until January 1 (60 days from November 1) to provide, in writing, to the County Supervisor evidence that their debt is not at least 3 months delinquent or that the debt is not legally enforceable. Borrowers who reduce their debt to 3 months or less overdue during this 60-day period will not be offset.

§ 1951.125 Processing borrowers' requests not to exercise IRS offset.

If a borrower responds to FmHA Form Letter 1951–6 within 60 days from the date of receipt, the County Supervisor will review the borrower's reasons for believing that the debt is either not more than 3 months overdue or is not legally enforceable. After such determination, the County Supervisor will send the borrower FmHA Form Letter 1951–7 advising the borrower if offset will be exercised.

§ 1951.126 Final referral to IRS.

All accounts not eliminated will be sent to IRS for offset, and a list of those accounts sent to each appropriate County Office. Prior to referring the account to the IRS for offset, the debt must have been reported to a consumer reporting agency pursuant to FmHA regulations governing such reporting. Each County Office will review the list upon receipt and submit Form FmHA 1951–43, "Accounts to be Removed from IRS Offset" in accordance with the FMI for that form. The list of borrowers will be reviewed each week and, if any of the events listed under § 1951.122 of this subpart occurs, Form FmHA 1951–43 will be submitted immediately. This weekly review will continue until September 1 for the previous year's submission, or until action has been taken on each account (offset or removal).

§ 1951.127 Processing of amounts offset.

After IRS effects an offset, IRS will notify the Finance Office. The Finance Office will deduct an amount equal to IRS' processing costs from the amount offset to reimburse the Agency for the cost of processing the offset and will credit the borrower's amount for the amount remaining and will notify the appropriate County Office. The County Supervisor will carefully review the list to ensure that any borrower who would have been eliminated from offset due to the provisions of § 1951.122 of this subpart was not subjected to an offset. If the offset was not correct, the County Supervisor will immediately notify the Finance Office of any such offsets using FmHA Form Letter 1951–5. This Form Letter will be processed by the Finance Office and a refund, including the processing fee, will be sent to the borrower. If the offset is correct, Finance and County Office records will be adjusted accordingly.

Date: December 22, 1988.

La Verne Ausman,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–593 Filed 1–10–89; 8:45 am]

BILLING CODE 3410–07–M

Animal and Plant Health Inspection Service

[Docket No. 87–182]

9 CFR Part 92

Importation of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the animal importation regulations by removing all references to "Deputy Administrator" and replacing them with references to "Administrator". We are also removing all references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service". These changes are necessary to clarify that authority under these regulations is held by the Administrator, Animal and Plant Health Inspection Service, and not by the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service. We are also making several other nonsubstantive changes to ensure that the regulations are clear and terms are used in a uniform and consistent manner.

EFFECTIVE DATE: January 11, 1989.

FOR FURTHER INFORMATION CONTACT: Helene R. Wright, Chief, Regulatory Analysis and Development, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301–436–8682.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR Part 92 concern the importation into the United States of certain animals, birds, poultry, and pigeons. These regulations were written before publication of this document, and they imply that the Deputy Administrator, Veterinary Services, of the Animal and Plant Health Inspection Service, is the official responsible for various decisions under these regulations. However, this is not correct. Authority and responsibility belongs to the Administrator, Animal and Plant Health Inspection Service.

Therefore, to clarify the regulations with respect to the Administrator's authority and responsibility, we are making nonsubstantive changes in the regulations. We are removing all references to "Deputy Administrator" and replacing them with references to "Administrator", and removing references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service". We are also adding a definition of "Animal and Plant Health

Inspection Service," and deleting the definition of "Deputy Administrator."

We are also making other nonsubstantive changes in the regulations. We are amending the reference in § 92.17 of the regulations to "Veterinary Services" of foreign governments. We are changing the captial letters in "Veterinary Services" to lower case, to eliminate any confusion with the administrative unit of the Animal and Plant Health Inspection Service known as "Veterinary Services." In addition, we are amending the reference in the regulations to "Veterinary Services quarantine facility" (§ 92.2(j)(2)) to read "USDA-operated quarantine facility." With these changes, all references in the regulations to these facilities will be uniform. Also, we are amending § 92.2(i)(2)(iii)(A) to change the reference to "Veterinary Services" to read "the Department." This amendment conforms the wording of the text to the wording of footnote 4, which refers to breed associations and recordkeeping systems approved by "the Department."

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Making the nonsubstantive wording changes described in this document will have no effect on importers, quarantine facility operators, or any other persons outside of the Animal and Plant Health Inspection Service.

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.

Effective Date

Determining the official responsible for decisions made under these animal importation regulations is a matter of internal Agency management. Therefore, neither a general notice of proposed rulemaking nor a 30-day delay in effective date is required under 5 U.S.C. 553. Accordingly, this regulation is effective upon publication.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

These programs/activities under 9 CFR Part 92 are listed in the Catalog of Federal Domestic Assistance under No. 10.025 and are subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, we are amending 9 CFR Part 92 as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for Part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105; 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.1 [Amended]

2. In § 92.1, the definition of "Deputy Administrator, Veterinary Services" is removed and the definitions of "Accredited veterinarian", "Department", "Inspector", "Port veterinarian", and "Recognized slaughtering establishment" are revised to read as follows:

* * * * *

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of Part 161 of this title to perform functions specified in Parts 1, 2, 3, and 11 of Subchapter A, and Subchapters B, C, and D of this chapter, and to perform functions required by cooperative state-federal disease control and eradication programs.

* * * * *

Department. The United States Department of Agriculture (USDA).

* * * * *

Inspector. An employee of the Animal and Plant Health Inspection Service authorized to perform duties required under this Part.

* * * * *

Port Veterinarian. A veterinarian employed by the Animal and Plant Health Inspection Service to perform duties required under this Part at a port of entry.

* * * * *

Recognized slaughtering establishment.[1] An establishment where slaughtering operations are regularly carried on under federal or state inspection and which has been approved by the Animal and Plant Health Inspection Service to receive animals for slaughter under this Part.

* * * * *

§ 92.1 [Amended]

3. In § 92.1, a definition of "Animal and Plant Health Inspection Service" is added, in alphabetical order, to read as follows:

* * * * *

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

* * * * *

§ 92.2 [Amended]

4. In § 92.2, paragraph (i)(2)(iii) (A), remove the words "Veterinary Services" and add the words "the Department" in their place.

5. In § 92.2, paragraph (j)(2), remove the words "Veterinary Services" and add the words "USDA-operated" in their place.

§ 92.2a [Amended]

6. In § 92.2a, paragraph (a), remove the words "of the Division".

§ 92.4 [Amended]

7. In § 92.4, paragraph (a)(4)(i), remove the words "Veterinary Services" and add the word "USDA" in their place.

8. In § 92.4, paragraph (a)(10)(iv)(B), remove ", Animal and Plant Health Inspection Service" in the third and fourth sentences.

[1] The name of recognized slaughtering establishments approved under this Part may be obtained from the Area Veterinarian in Charge, Veterinary Services, for the state of destination of the shipment.

9. In § 92.4, paragraph (c)(1), second sentence, remove the words "with Veterinary Services" and add the words "with APHIS" in their place.

§ 92.8 [Amended]

10. In § 92.8, paragraph (a), remove the words "of Veterinary Services".

§ 92.11 [Amended]

11. In § 92.11, paragraph (d)(1)(iv), sentence 2, remove the words "Deputy Administrator, Veterinary Services," and add the word "Administrator," in their place; and remove the words "notified by Veterinary Services" and add the words "notified by APHIS" in their place.

12. In § 92.11, paragraph (d)(2), sentence 3, remove the words "Veterinary Medical Officer of Veterinary Services" and add the words "Veterinary Medical Officer of APHIS" in their place.

13. In § 92.11, paragraph (f)(7)(iii), "Cooperative and Trust Fund Agreement," title paragraph, remove ", Veterinary Services".

§ 92.16 [Amended]

14. In § 92.16, remove the words "Deputy Administrator, Veterinary Services" and add the word "Administrator" in their place.

§ 92.17 [Amended]

15. In § 92.17, remove the words "Veterinary Services of the national government" and add the words "veterinary services of the national government".

§ 92.27 [Amended]

16. In § 92.27, paragraph (a), remove the words "obtain from Veterinary Services an import permit as provided in § 92.4: *Provided,* That the Deputy Administrator, Veterinary Services," and add the words "obtain from APHIS an import permit as provided in § 92.4: *Provided,* That the Administrator," in their place.

§ 92.39 [Amended]

17. In § 92.39, remove the word "Deputy" and add the word "Administrator" in its place.

§ 92.41 [Amended]

18. In § 92.41, paragraph (a)(5), remove the words "Administrator, Veterinary Services," and add the word "Administrator" in their place; and remove the words "applicants and Veterinary Service personnel" and add the words "applicants and APHIS personnel" in their place.

19. In § 92.41, paragraphs (c)(3)(i) and (c)(3)(ii), remove the words "Veterinary Services' employees" and add the words "APHIS employees" in their place.

20. In § 92.41, paragraph (c)(3)(iv) remove the words "a Veterinary Services protocol" and add the words "an APHIS protocol" in their place.

21. In § 92.41, paragraph (d), in the Cooperative and Trust Fund Agreement, in the heading remove "Veterinary Services"; in the first paragraph remove, "Veterinary Services"; and in the signature block remove the following:

"Date _____

_____

Cooperator,
Date _____

_____

Director, NPPS, VS."

and add the following in its place:

"Date _____
Cooperator _____
Date _____
(Signature of authorized APHIS official) ____
(Title of signing official)" _____

§§ 92.2, 92.3, 92.4, 92.5, 92.6, 92.8, 92.11, 92.12, 92.17, 92.20, 92.21, 92.25, 92.27, 92.28, 92.30, 92.33, 92.34, 92.36, 92.41, and 92.42 [Amended]

22. In addition to the amendments set forth above, in 9 CFR Part 92 remove the word "Deputy" in the following places:

(a) Section 92.2 (a); (c)(1); (c)(2)(ii); (c)(3)(ii); (c)(3)(ii), footnote 2; (c)(3)(iii); (d), footnote 3; (d)(1)(ii); (d)(3)(v); (i)(2)(i); (j)(2); and (j)(2), footnote 6;

(b) Section 92.3(g), footnote 1; and (h);

(c) Section 92.4 (a)(3); (a)(4)(iv)(B); (a)(5)(i); (a)(6)(i); (a)(7); (a)(8)(i); (a)(9)(i); (a)(10)(i); (a)(10)(iii); (a)(10)(iv)(A); (a)(10)(iv)(B); (c)(1); (c)(3), "Agreement," paragraph #1; (c)(3), "Agreement," paragraph #2; (d)(1)(iii); (d)(4); and (d)(6);

(d) Section 92.5(a)(3);

(e) Section 92.6(c);

(f) Section 92.8(a);

(g) Section 92.11 (b)(1); (c)(1); (c)(2); (d)(1)(iii); (d)(1)(iii), footnote 1; (d)(1)(iv); (d)(2); (d)(3)(i), footnote 2; (d)(3)(iii)(D); (e); (f); (f), footnote 3; (f)(3)(ii)(E); (f)(4); (f)(5)(i); (f)(5)(iii); (f)(5)(vi); (f)(6)(i); (f)(6)(iv); (f)(7)(i); (f)(7)(ii); (f)(7)(iii), "Cooperative and Trust Fund Agreement," paragraph (A)(4); (f)(7)(iii), "Cooperative and Trust Fund Agreement," paragraph (A)(12); (f)(7)(iii), "Cooperative and Trust Fund Agreement," paragraph (A)(14), second paragraph; (f)(7)(iii), "Cooperative and Trust Fund Agreement," paragraph (B)(6); and (f)(7)(iii), "Cooperative and Trust Fund Agreement," paragraph (B)(7);

(h) Section 92.12 (a); (b);

(i) Section 92.17;

(j) Section 92.20(a);

(k) Section 92.21(b);

(l) Section 92.25(a);

(m) Section 92.27(c);

(n) Section 92.28 (a); (c); and (d);

(o) Section 92.30;

(p) Section 92.33(a);

(q) Section 92.34 and 92.34, footnote 7;

(s) Section 92.36(c);

(t) Section 92.41 (a)(1); (a)(5); (c)(2); (c)(4); (c)(5); (d), "Cooperative and Trust Fund Agreement," Part I, paragraph A.1.b.; (d), "Cooperative and Trust Fund Agreement," Part II, paragraph A.1.b.; (d), "Cooperative and Trust Fund Agreement," Part II, paragraph A.7.; and (d), "Cooperative and Trust Fund Agreement," Part II, paragraph A.8.; and

(u) Section 92.42 (a)(1); (a)(4); (a)(5); (a)(6); (a)(7); (b)(1)(iv); (b)(2)(vii), footnote 16; (b)(3)(i); (b)(4)(ii); (b)(4)(iii); (b)(4)(vi); (b)(4)(viii); and (b)(4)(xi).

§§ 92.2, 92.3, 92.4, 92.6, 92.11, 92.12, 92.30, and 92.42 [Amended]

23. In addition to the amendments set forth above, in 9 CFR Part 92 remove the words "Administrator, Veterinary Services." and add, in their place, the word "Administrator." in the following places:

(a) Section 92.2(j)(2), first undersignated paragraph;

(b) Section 92.3(g), footnote 1;

(c) Section 92.4 (a)(7); (d)(1)(iii); and (d)(4);

(d) Section 92.6(c);

(e) Section 92.11(d)(2), first sentence; (f)(7)(iii), "Cooperative and Trust Fund Agreement," paragraph (a)(14), second paragraph;

(f) Section 92.12(a), second sentence and twelfth sentence; and (b), second sentence and eighth sentence;

(g) Section 92.30; and

(m) Section 92.42(a)(4), fourth and fifth sentence; and (a)(6).

§§ 92.4, 92.5, 92.12, 92.17, 92.21, 92.27, 92.28, 92.33, and 92.36 [Amended]

24. In addition to the amendments set forth above, in 9 CFR Part 92 remove the words "Administrator, Veterinary Services" and add, in their place, the word "Administrator" in the following places:

(a) Section 92.4(c)(1); (c)(3), "Agreement," paragraph 1; (c)(3), "Agreement," paragraph 2; and (d)(6);

(b) Section 92.5(a)(3);

(c) Section 92.12(b);

(d) Section 92.17;

(e) Section 92.21(b);

(f) Section 92.27(c);

(g) Section 92.28 (a); (c); and (d);

(h) Section 92.33(a); and
(i) Section 92.36(c).

§§ 92.2, 92.4, 92.11, 92.33, 92.34, 92.41, and 92.42 [Amended]

25. In addition to the amendments set forth above, in 9 CFR Part 92 remove the words "Veterinary Services," from the following places:

(a) Section 92.2 (c)(1); (c)(2)(ii); (c)(2)(ii), footnote 3; and (d), footnote 4;
(b) Section 92.4 (a)(6)(i); (a)(7); (a)(9)(i); and (a)(10)(iii);
(c) Section 92.11 (c)(1); (c)(2); (d)(1)(iii); (d)(1)(iii), footnote 1; (d)(2), second sentence; (d)(2), fourth sentence; (d)(3)(i), footnote 2; (e); (f), footnote 3; (f)(3)(ii)(E), second sentence; (f)(4); (f)(5); (f)(5)(vi), third and fifth sentences; (f)(6)(i); (f)(6)(iv); (f)(7)(i); (f)(7)(iii), "Cooperative and Trust Fund Agreement," second paragraph; (f)(7)(iii), "Cooperative and Trust Fund Agreement," paragraph (B)(6); and (f)(7)(iii), "Cooperative and Trust Fund Agreement," paragraph (B)(7);
(d) Section 92.33(a);
(e) Section 92.34, footnote 7;
(f) Section 92.41(d), "Cooperative and Trust Fund Agreement," first paragraph; and
(g) Section 92.42(a)(4), first sentence; (a)(7); (b)(1)(iv); and (b)(2)(vii), footnote 16.

§§ 92.4, 92.11, 92.12; 92.25; and 92.42 [Amended]

26. In addition to the amendment set forth above, in 9 CFR Part 92, remove the words "Administrator, Veterinary Services," and add, in their place, the word "Administrator" in the following places:

(a) Section 92.4 (a)(4)(iv)(B); (a)(8)(i); (a)(10)(i); (a)(10)(iv)(A); and (a)(10)(iv)(B);
(b) Section 92.11(d)(1)(iv), first sentence; (d)(1)(iv), third sentence; (d)(1)(iv), fourth sentence; (d)(3)(iii)(D); and (f)(5)(iii);
(c) Section 92.12(a), sixth and eighth sentences;
(d) Section 92.25(a);
(e) Section 92.41(a)(5); and
(f) Section 92.42 (a)(1); (a)(4), sixth sentence; (a)(5); (b)(4)(ii); (b)(4)(vi); (b)(4)(viii); and (b)(4)(xi).

§§ 92.3, 92.11, 92.12, 92.20, 92.24, and 92.42 [Amended]

27. In addition to the amendments set forth above, in 9 CFR Part 92 remove the words "Veterinary Services" from the following places:

(a) Section 92.3(h);
(b) Section 92.11 (b)(1); (f)(1); (f)(3)(i); (f)(3)(i)(B); (f)(3)(ii)(E), first sentence;
(c) Section 92.12(a), fourth sentence;
(d) Section 92.20(a);
(e) Section 92.24(a); and
(f) Section 92.42(a)(4), second sentence.

§§ 92.2, 92.11, and 92.45 [Amended]

28. In addition to the amendments set forth above, in 9 CFR Part 92 remove the words "a Veterinary Services inspector" and add, in their place, the words "an inspector" in the following places:

(a) Section 92.2(i)(2)(v)(H);
(b) Section 92.11(f)(3)(ii)(E) and (f)(3)(ii)(F); and
(c) Section 92.45 (b)(3)(iii); and (b)(3)(iv)(B).

§§ 92.11 and 92.45 [Amended]

29. In addition to the amendments set forth above, in 9 CFR Part 92 remove the words "a Veterinary Services veterinarian" and add, in their place, the words "an APHIS veterinarian" in the following places:

(a) Section 92.11(d)(3)(i); and
(b) Section 92.45(b)(1).

§§ 92.2, 92.3, 92.4, 92.8, 92.10, 92.11, 92.12, 92.19, 92.31, 92.41, 92.42, and 92.45 [Amended]

30. In addition to the amendments set forth above, in 9 CFR Part 92 remove the words "Veterinary Services" and add, in their place, the word "APHIS" in the following places:

(a) Section 92.2(c)(3)(v);
(b) Section 92.3(a);
(c) Section 92.4, heading;
(d) Section 92.4 (a)(1); (c)(3), "Agreement," paragraph #5; and (d)(3);
(e) Section 92.8 (b); and (c);
(f) Section 92.10
(g) Section 92.11 (d)(3)(iv); (f)(3)(ii)(D); (f)(3)(iii); and (f)(5)(vi), fourth sentence;
(h) Section 92.12(a), third, fourth and fifth sentences; and (b), third and fourth sentences;
(i) Section 92.19(a);
(j) Section 92.31(a);
(k) Section 92.41 (a)(1); (c)(6); (d), "Cooperative and Trust Fund Agreement," Part I, paragraph A.3.; and (d), "Cooperative and Trust Fund Agreement," Part II, paragrph A.2.;
(l) Section 92.42(b)(2)(iv); and
(m) Section 92.45 (b)(3)(i); (b)(3)(i)(B); and (b)(3)(v).

Done at Washington, DC., this 5th day of January, 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-493 Filed 1-10-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 89-6]

Customs Regulations Amendment Concerning Reciprocal Privileges Extended to Aircraft of Thailand

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by expanding the exemptions to which commercial aircraft registered in Thailand are eligible, to include an exemption from the payment of Customs duties and internal revenue taxes on supplies and equipment withdrawn from Customs or internal revenue custody for use by aircraft in certain circumstances. The Department of Commerce has informed Customs that Thailand will now exempt flights by U.S. registered carriers from duties and taxes on ground support equipment in a manner substantially reciprocal to those exemption privileges the United States may provide, under law, to operators of foreign registered aircraft. Accordingly, the United States will now exempt commercial aircraft of Thai registry from the payment of duties and taxes when ground support equipment is withdrawn from Customs or internal revenue custody. Previously, the exemption has applied only to aircraft supplies and did not extend to ground support equipment.

DATES: The exemption became effective on November 16, 1988. This regulation is effective January 11, 1989.

FOR FURTHER INFORMATION CONTACT: William Lawlor, Entry Rulings Branch, U.S. Customs Service, (202) 566-5856.

SUPPLEMENTARY INFORMATION:

Background

Sections 309 and 317, Tariff Act of 1930, as amended (19 U.S.C. 1309 and 1317), provide that foreign-registered aircraft engaged in foreign trade may withdraw articles of foreign or domestic origin for use as supplies (including equipment), ground equipment, maintenance or repair of the aircraft from Customs or internal revenue custody without the payment of Customs duties and/or internal revenue taxes. This privilege is granted if the Secretary of Commerce finds and advises the Secretary of the Treasury, that the country in which the foreign aircraft is registered allows substantially reciprocal privileges to United States registered aircraft. Section

10.59(f), Customs Regulations (19 CFR 10.59(f)), lists those countries whose aircraft have been found to be entitled to these privileges.

In T.D. 71-138, the United States extended a partial exemption from duties and taxes to Thai aircraft. In that decision, the exemption from duties and taxes was not extended to ground equipment.

In accordance with 19 U.S.C. 1309(d), the Secretary of Commerce found and conveyed to the Customs Service, that Thailand will now grant to American operators of U.S. registered aircraft, exemption from customs duties and related taxes on ground support equipment, except security equipment, needed to support commercial flights into an out of Thailand, in a manner that is substantially reciprocal to exemption privileges which the United States may provide, under 19 U.S.C. 1309 and 1317, and under 26 U.S.C. 4221, for such equipment and use by foreign registered aircraft operating into and out of the United States. This finding became effective on November 16, 1988. This document amends § 10.59(f), Customs Regulations (19 CFR 10.59(f)), by removing the exception which had appeared in the regulations which indicated that Thai aircraft were not exempt from duties and taxes which applied to ground support equipment.

Authority to sign an amendment to this section has been delegated to the Chief, Regulations and Disclosure Law Branch.

Executive Order 12291

This document does not meet the criteria for a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), certification is not required because no notice of this action is necessary.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because the subject matter of this document does not constitute a departure from established policy or procedures but merely announces the granting of an exemption for which there is a statutory basis, it has been determined, pursuant to 5 U.S.C. 553(b)(B), that notice and public procedure thereon are unnecessary. As Thailand is extending exemption privileges regarding ground support equipment to United States aircraft, a delayed effective date is not appropriate.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports, Exports, Oil imports, Petroleum.

Amendment to the Regulations

Part 10, Customs Regulations (19 CFR Part 10), is amended as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 and specific relevant authority continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1623, 1624. Section 10.59 also issued under 19 U.S.C. 1309, 1317.

§ 10.59 [Amended]

2. Section 10.59(f), Customs Regulations (19 CFR 10.59(f)), is amended by deleting, in the column headed "Exceptions, if any, as noted", opposite "Thailand", the wording "Not applicable to ground equipment", and inserting the number of this Treasury Decision opposite "Thailand" in the column headed "Treasury Decision(s)".

Dated: January 5, 1989.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 89-549 Filed 1-10-89; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Part 10

[T.D. 89-7]

Customs Regulations Amendment Concerning Reciprocal Privileges Extended to Aircraft of Turkey

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding Turkey to the list of countries whose commercial aircraft are exempt from the payment of Customs duties and internal revenue taxes on supplies and equipment withdrawn from Customs or internal revenue custody for use by aircraft in certain circumstances. The Department of Commerce has found that Turkey will exempt U.S. registered aircraft from duties and taxes on aircraft supplies and support equipment in a manner substantially reciprocal to those exemption privileges the United States may provide, under law, to operators of foreign registered aircraft. Accordingly, the United States will now exempt commercial aircraft of Turkish registry from the payment of duties and taxes when their supplies and ground support equipment are withdrawn from Customs or internal revenue custody.

DATES: The exemption became effective on December 5, 1988. This regulation is effective January 11, 1989.

FOR FURTHER INFORMATION CONTACT: William G. Rosoff, Entry Rulings Branch, U.S. Customs Service, (202) 566-5856.

SUPPLEMENTARY INFORMATION:

Background

Sections 309 and 317, Tariff Act of 1930, as amended (19 U.S.C. 1309 and 1317), provide that foreign-registered aircraft engaged in foreign trade may withdraw articles of foreign or domestic origin for use as supplies (including equipment), ground equipment, or for maintenance or repair of the aircraft from Customs or internal revenue custody without the payment of Customs duties and/or internal revenue taxes. This privilege is granted if the Secretary of Commerce finds and advises the Secretary of the Treasury that the country in which the foreign aircraft is registered allows substantially reciprocal privileges to U.S. registered aircraft. Section 10.59(f), Customs Regulations (19 CFR 10.59(f)), lists those countries whose aircraft have been found to be entitled to these privileges.

In accordance with 19 U.S.C. 1309(d), the Secretary of Commerce found and conveyed to the Customs Service, effective December 5, 1988, that Turkey will grant to American operators of U.S. registered aircraft, exemption from customs duties and related taxes on aircraft supplies and equipment needed to support commercial aviation flights into an out of Turkey, in a manner that is substantially reciprocal to exemption privileges which the United States may provide, under 19 USC §§ 309 and 317, and under 26 USC 4221, to operators of foreign registered aircraft. This document amends § 10.59(f), Customs Regulations (19 CFR 10.59(f)), by changing the list of countries whose aircraft are exempt from the payment of Customs duties and internal revenue taxes on supplies and equipment withdrawn from Customs or internal

revenue custody for use by aircraft to indicate that Turkey has been granted an exemption regarding aircraft supplies and ground support equipment.

Authority to sign an amendment to this section has been delegated to the Chief, Regulations and Disclosure Law Branch.

Executive Order 12291

This document does not meet the criteria for a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), certification is not required because no notice of this action is necessary.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because the subject matter of this document does not constitute a departure from established policy or procedures but merely announces the granting of an exemption for which there is a statutory basis, it has been determined, pursuant to 5 U.S.C. 553(b)(B), that notice and public procedure thereon are unnecessary. As Turkey is currently extending exemption privileges regarding supplies and ground support equipment to United States aircraft, a delayed effective date is not appropriate.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports, Exports, Oil imports, Petroleum.

Amendment to the Regulations

Part 10, Customs Regulations (19 CFR Part 10), is amended as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 and specific relevant authority continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1623, 1624. § 10.59 also issued under 19 U.S.C 1309, 1317.

§ 10.59 [Amended]

2. Section 10.59(f), Customs Regulations (19 CFR 10.59(f)), is amended by inserting "Turkey" in the proper alphabetical position in the column headed "Country", and the number of this Treasury Decision opposite in the column headed "Treasury Decision(s)".

Dated: January 5, 1989.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 89-551 Filed 1-10-89; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Part 10

[T.D. 89-5]

Customs Regulations Amendment Concerning Reciprocal Privileges Extended to Aircraft of Zambia

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding Zambia to the list of countries whose commercial aircraft are exempt from the payment of Customs duties and internal revenue taxes on supplies and equipment withdrawn from Customs or internal revenue custody for use by aircraft in certain circumstances. The Department of Commerce has found that Zambia will exempt U.S. registered aircraft from duties and taxes on aircraft supplies and support equipment in a manner substantially reciprocal to those exemption privileges the United States may provide, under law, to operators of foreign registered aircraft. Accordingly, the United States will now exempt commercial aircraft of Zambian registry from the payment of duties and taxes when their supplies and ground support equipment are withdrawn from Customs or internal revenue custody.

DATES: The exemption became effective on March 30, 1988. This regulation is effective January 11, 1989.

FOR FURTHER INFORMATION CONTACT: William Lawlor, Entry Rulings Branch, (202) 566-5856.

SUPPLEMENTARY INFORMATION:

Background

Sections 309 and 317, Tariff Act of 1930, as amended (19 U.S.C. 1309 and 1317), provide that foreign-registered aircraft engaged in foreign trade may withdraw articles of foreign or domestic origin for use as supplies (including equipment), ground equipment, or for maintenance or repair of the aircraft from Customs or internal revenue custody without the payment of Customs duties and/or internal revenue taxes. This privilege is granted if the Secretary of Commerce finds and advises the Secretary of the Treasury that the country in which the foreign aircraft is registered allows substantially reciprocal privileges to U.S. registered aircraft. Section 10.59(f), Customs Regulations (19 CFR 20.59(f)), lists those countries whose aircraft have been found to be entitled to these privileges.

In accordance with 19 U.S.C. 1309(d), the Secretary of Commerce found and conveyed to the Customs Service, effective March 30, 1988, that Zambia will grant to American operators of U.S. registered aircraft, exemption from Customs duties and related taxes on aircraft supplies and equipment needed to support commercial aviation flights into and out of Zambia, in a manner that is substantially reciprocal to exemption privileges which the United States may provide, under 19 U.S.C. 309 and 317, and under 26 U.S.C. 4221, to operators of foreign registered aircraft. This document amends § 10.59(f), Customs Regulations (19 CFR 10.59(f)), by changing the list of countries whose aircraft are exempt from the payment of Customs duties and internal revenue taxes on supplies and equipment withdrawn from Customs or internal revenue custody for use by aircraft to indicate that Zambia has been granted an exemption regarding aircraft supplies and ground support equipment.

Authority to sign an amendment to this section had been delegated to the Chief, Regulations and Disclosure Law Branch.

Executive Order 12291

This document does not meet the criteria for a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), certification is not required because no notice of this action is necessary.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because the subject matter of this document does not constitute a departure from established policy or procedures but merely announces the granting of an exemption for which there is a statutory basis, it has been determined, pursuant to 5 U.S.C.

553(b)(B), that notice and public procedure thereon are unnecessary. As Zambia is currently extending exemption privileges regarding supplies and ground support equipment to United States aircraft, a delayed effective date is not appropriate.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports, Exports, Oil imports, Petroleum.

Amendment to the Regulations

Part 10, Customs Regulations (19 CFR Part 10), is amended as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 and specific relevant authority continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1623, 1624. Section 10.59 also issued under 19 U.S.C. 1309, 1317.

§ 10.59 [Amended]

2. Section 10.59(f), Customs Regulations (19 CFR 10.59(f)), is amended by inserting "Zambia" in the proper alphabetical position in the column headed "Country", and the number of this Treasury Decision opposite in the column headed "Treasury Decision(s)".

Dated: January 4, 1989.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 89-550 Filed 1-10-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 65

[DoD Directive 1304.19]

Accession of Chaplains for the Military

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This Part amends 32 CFR Part 65 to add the Appendix which should have been included in the original submission. 32 CFR Part 65 was printed in the **Federal Register** on December 5, 1988 (53 FR 48898) as a final rule.

EFFECTIVE DATE: November 22, 1988.

FOR FURTHER INFORMATION CONTACT: Chaplain, Colonel John L. Mann, USAF, Office of the Assistant Secretary of Defense (Force Management and Personnel), Armed Forces Chaplains Board, Room 4C759, Pentagon, Washington, DC 20301-4000, telephone 202-697-9015.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 65

Armed Forces, Chaplains.

Accordingly, 32 CFR Part 65 is amended as follows:

PART 65-[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 10 U.S.C. 532, 591, and EO 9397, 3 CFR, 1943-1948 Comp., p. 283.

2. Appendix-Ecclesiastical Endorsing Agent Certification is added to

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

January 6, 1989.

BILLING CODE 3810-01-M

Appendix—Ecclestiastical Endorsing Agent Certification.

ECCLESIASTICAL ENDORSING AGENT CERTIFICATION

Form Approved
OMB Number 0704-0190
Expires Jan 31, 1990

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Privacy Act Statement

AUTHORITY: Title 10, United States Code, Sections 532 and 591; and EO 9397, November 1943 (SSN)

PURPOSE: To certify the professional qualifications of clergy for appointment in the Military Services.

ROUTINE USE: This form is an essential element of a chaplain's professional qualifications and will become part of a chaplain's military personnel record.

DISCLOSURE: Voluntary; however, failure to provide all the information requested may significantly delay the processing of this endorsement.

1. FROM:	a. TYPED OR PRINTED NAME OF ENDORSING AGENCY	b. ADDRESS *(Street, City, State, and Zip Code)*
2. TO:	a. CHIEF OF CHAPLAINS *(X appropriate block)* ☐ (1) Army ☐ (2) Navy ☐ (3) Air Force	b. ADDRESS *(Street, City, State, and Zip Code)*

3. APPLICANT INFORMATION

a. TYPED OR PRINTED NAME *(Last, First, Middle Initial)*		e. NUMBER OF YEARS APPLICANT HAS COMPLETED ACTIVE PROFESSIONAL / PASTORAL EXPERIENCE *(after completing the requirements for the Chaplaincy).*
b. SOCIAL SECURITY NUMBER (SSN)	c. TELEPHONE NUMBER *(Include Area Code)*	f. NUMBER OF YEARS APPLICANT HAS COMPLETED PRIOR ACTIVE COMMISSIONED OFFICER SERVICE.
d. ADDRESS *(Street, City, State, and Zip Code)*		g. APPLICATION IS FOR *(X one)* ☐ (1) Inactive Reserve ☐ (2) Extended active duty ☐ (3) Appointment to regular commissioned officer ☐ (4) Appointment to National Guard

4. ENDORSER INFORMATION

a. AS THE AUTHORIZED ENDORSING AGENT FOR *(name of religious faith group)* _____ AND IN RECOGNITION OF DoD DIRECTIVE 1304.19, I HEREBY CERTIFY THE ABOVE APPLICANT PROFESSIONALLY QUALIFIED AS CLERGY AND ENDORSED FOR THE MILITARY CHAPLAINCY.

b. TYPED OR PRINTED NAME *(Last, First, Middle Initial)*	c. TELEPHONE NUMBER *(Include Area Code)*
d. SIGNATURE	e. DATE SIGNED *(YYMMDD)*

5. AUTHORIZED AGENT FOR ADMINISTRATIVE MATTERS PERTAINING TO THIS ENDORSEMENT *(DoD Directive 1304.19, Paragraph E.2.c.).*

a. TYPED OR PRINTED NAME *(Last, First, Middle Initial)*	c. ADDRESS *(Street, City, State, and Zip Code)*
b. TELEPHONE NUMBER *(Include Area Code)*	

6. COMMENTS

DD Form 2088, SEP 88 *Previous editions are obsolete.* 390/265

[FR Doc. 89-586 Filed 1-10-89; 8:45 am]

BILLING CODE 3810-01-C

32 CFR Part 376

[DoD Directive 5154.28]

Joint Tactical Command, Control, and Communications Agency (JTC3A)

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This rule removes 32 CFR Part 376 in its entirety. It has been superseded by 32 CFR Part 362, therefore is no longer valid.

EFFECTIVE DATE: December 12, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Bynum, Directives Division, Correspondence and Directives Directorate, Washington Headquarters Services, Washington, DC 20301-1155.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 376

Organization and functions (Government agencies).

PART 376—[REMOVED]

Accordingly, Title 32, Chapter R is amended to remove Part 376.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 6, 1989.

[FR Doc. 89-588 Filed 1-10-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6699

[ID-943-09-4214-10; I-25492]

Partial Revocation of Secretarial Order Dated March 12, 1910; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial order insofar as it affects 74.91 acres of public lands withdrawn for the Bureau of Reclamation's Boise Project. The withdrawal is being revoked to permit consummation of a pending Forest Service exchange. The lands are located within the Boise National Forest. This action will open the lands to surface entry and mining. All of the lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: February 7, 1989

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1735.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order dated March 12, 1910, which withdrew public lands for the Bureau of Reclamation's Boise Project is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 3 N., R. 6 E.,
Sec. 31, NW¼NE¼;
Sec. 32, lot 4.

The areas described aggregate 74.91 acres in Elmore County.

2. At 9:00 a.m. on February 7, 1989, the lands described in paragraph 1 will be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

J. Steven Griles,

Assistant Secretary of the Interior.

January 3, 1989.

[FR Doc. 89-525 Filed 1-10-89; 8:45 am]

BILLING CODE 4310-GG-M

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43 CFR Public Land Order 6700

[MT-930-09-4214-10; NDM 43100]

Partial Revocation of Executive Order No. 7674; North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive order insofar as it affects 40.00 acres of public land withdrawn for the Department of Agriculture in connection with soil erosion control and other land utilization activities. The revocation is needed to permit consummation of an exchange. This action will open the land to surface disposal. The land has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-657-6090.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Executive Order No. 7674 of July 19, 1937 (as modified by Executive Order No. 7908 of June 9, 1938, and Executive Order No. 8531 of August 31, 1940), which withdrew land for the Department of Agriculture for use and development in connection with the Little Missouri Project LA-ND 1, is hereby revoked insofar as it affects the following described land:

Fifth Principal Meridian

T. 148 N., R. 98 W.,
Sec. 13, SW¼NW¼.

The area described contains 40.00 acres in McKenzie County.

2. At 9 a.m. on February 7, 1989, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on February 7, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

J. Steven Griles,

Assistant Secretary of the Interior.

January 3, 1989.

[FR Doc. 89-527 Filed 1-10-89; 8:45 am]

BILLING CODE 4310-DN-M

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43 CFR Public Land Order 6701

[ID-943-09-4214-10; I-21725]

Partial Revocation of Bureau of Land Management Order dated January 28, 1952; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Bureau of Land Management order insofar as it affects 360.00 acres of public land withdrawn for the Bureau of Reclamation's Southwest Idaho Water Development Study Area. The revocation is needed to permit disposal of the land through public sale. This action will restore 360 acres to surface

entry and mining. All of the land has been and will remain open to mineral leasing.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1597.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Bureau of Land Management Order dated January 28, 1952, which withdrew lands for the Bureau of Reclamation's Southwest Idaho Water Develoment Study Area is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 1 N., R. 1 E.
Sec. 6, E½SE¼, E½E½W½SE¼;
Sec. 7, E½,NE¼, E½E½W½NE¼;
Sec. 8, NW¼.

The area described contains 360.00 acres in Ada County.

2. At 9:00 a.m. on February 7, 1989, the land described in paragraph 1 shall be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable law. All valid applications recevied at or prior to 9:00 a.m. on February 7, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9:00 a.m. on February 7, 1989, the land described in paragraph 1 will be opened to location under the United States mining laws. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

J. Steven Griles,

Assistant Secretary of the Interior.

January 3, 1989.

[FR Doc. 89-524 Filed 1-10-89; 8:45 am]

BILLING CODE 4310-GG-M

43 CFR Public Land Order 6702

[ID-943-09-4214; I-07470, I-09371, I-012556, I-15302, I-15594]

Revocation of Secretarial Order Dated December 9, 1918, Bureau of Land Management Order Dated August 18, 1955, and Public Land Order Numbers 1829, 2022, 2066, and 3164; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes one Secretarial order, one Bureau of Land Management (BLM) order, and four public land orders as to 59,028.51 acres of public, Forest Service, and private lands withdrawn for use by BLM as stock driveways. This action restores to surface entry 51,518.78 acres of public land which have been and remain open to mining and mineral leasing. The 7,189.29 acres of Forest Service lands, which have been and remain open to mining and mineral leasing, will be open to such forms of disposition as may by law be made of national forest lands. The balance of 320.44 acres are privately owned and not subject to the public land laws.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1735.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order dated December 9, 1918, Bureau of Land Management Order dated August 18, 1955, and Public Land Order Numbers 1829, 2022, 2066, and 3164, which withdrew the following described lands for stock driveways, are hereby revoked in their entirety:

Boise Meridian Public Lands

I-15594

T. 8 S., R. 18 E.,
Sec. 4, W½SW¼SW¼;
Sec. 9, W½SW¼NW¼.
T. 6 S., R. 14 E.,
Sec. 4, lot 3, S½NW¼, and W½SW¼;
Sec. 5, SE¼.

I-09371

T. 8 S., R. 18 E.,
Sec. 2, lot 3, SE¼NW¼, and N½SW¼;
Sec. 3, SW¼NW¼ and N½S½;
Sec. 4, S½N½ and W½NW¼SW¼.
T. 7 S., R. 18 E.,
Sec. 22, E½E½, S½SW¼, and SW¼SE¼;
Sec. 26, S½SW¼;
Sec. 27, E½E½ and NW¼NW¼.

I-07470

T. 7 S., R. 23 E.,
Sec. 5, lots 2, 3, 4, S½NW¼, and W½SW¼;
Sec. 6, lots 1 to 5, inclusive, SE¼NE¼, and E½SE¼;
Sec. 7, lot 1 and NE¼NE¼;
Sec. 8, NE¼NE¼.
T. 7 S., R. 22 E.,
Secs. 1, 2, 11, and 14.
T. 6 S., R. 22 E.,
Secs. 13, 14, and 23;
Sec. 26, W½E½ and W½;
Sec. 35.

I-012556

T. 4 S., R. 13 E.,
Sec. 29, W½W½;
Sec. 31, E½SE¼;
Sec. 32, NW¼ and W½SW¼.
T. 5 S., R. 13 E.,
Sec. 5, lot 4, SW¼NW¼, and W½SW¼;
Sec. 6, lot 1, SE¼NE¼, and E½SE¼;
Sec. 7, E½ and E½W½;
Sec. 8, W½NW¼;
Sec. 18, W½E½ and E½W½;
Sec. 19, W½E½ and E½W½;
Sec. 30, NW¼NE¼ and NE¼NW¼;
Sec. 31, SE¼NE¼ and E½SE¼.
T. 7 S., R. 18 E.,
Secs. 13 and 14;
Sec. 15, E½E½.
T. 7 S., R. 19 E.,
Sec. 8, S½;
Sec. 9, S½;
Sec. 10, S½;
Sec. 11, SW¼, W½SE¼, and SE¼SE¼;
Sec. 12, SW¼SW¼ and E½SE¼;
Sec. 13, N½;
Sec. 14, N½;
Sec. 15, N½;
Sec. 17;
Sec. 18, lots 1 to 8, inclusive, E½, and E½W½.
T. 8 S., 19 E.,
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 2, lots 1 to 4, inclusive, S½N½, and SE¼;
Sec. 3, lots 1 to 4, inclusive, S½N½;
Sec. 8, SE¼;
Sec. 9, NE¼NE¼, S½NE¼, and S½;
Sec. 10, NW¼;
Sec. 17, E½;
Sec. 20, E½;
Sec. 29, NE¼ and S½;
Sec. 30, E½SE¼;
Sec. 31, NE¼.
T. 6 S., R. 20 E.,
Sec. 15, E½;
Sec. 22, NE¼;
Sec. 23;
Sec. 24, N½;
Sec. 26;
Sec. 27, S½;
Sec. 34, lots 1 to 4, inclusive, N½, and N½S½.
T. 7 S., R. 20 E.,
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 7, lots 3, 4, E½SW¼, and SE¼;
Sec. 8, S½;
Sec. 9, S½;
Secs. 10 and 11;
Sec. 17, N½;

Sec. 18, lots 1, 2, NW¼, and E½NW¼.
T. 8 S., R. 20 E.,
Sec. 2, SW¼;
Sec. 3, S½;
Sec. 4, S½;
Sec. 5, S½;
Sec. 6, lots 1 to 11, inclusive, S½NE¼; SE¼ NW¼, E½SW¼, and SE¼;
Sec. 8, N½;
Sec. 35.
T. 9 S., R. 20 E.,
Sec. 1, lots 3, 4, S½NW¼, and SW½;
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 3, lots 1 to 4 inclusive, S½N½, N½S½, SE¼SW¼, and S½SE¼;
Sec. 4, lots 1 to 4, inclusive, and S½N½;
Sec. 5, lots 5, 6, 9, 10, and SE¼NE¼;
Sec. 12, W½.
T. 6 S., R. 21 E.,
Sec. 8;
Sec. 17, N½, SW¼, N½SE¼, and SW¼ SE¼;
Sec. 18, lots 7 to 12, inclusive, and SE¼;
Sec. 19, lots 1 to 6, inclusive, and NE¼;
Sec. 20, W½NE¼, NW¼, and S½;
Sec. 28, S½;
Sec. 29, E½;
Sec. 33.
T. 7 S., R. 21 E.,
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 11, 14, 23, and 24;
Sec. 31, lots 3, 4, E½SW¼, and SE¼;
Sec. 32, S½;
Sec. 33, S½;
Sec. 34, S½S½;
Sec. 35, S½S½.
T. 8 S., R. 21 E.,
Sec. 1, lots 1 to 4, inclusive, and S½N½;
Sec. 2, lots 1 to 4, inclusive, and S½N½;
Sec. 3, lots 1 to 4, inclusive, and S½N½;
Sec. 4, lots 1 to 4, inclusive, and SE¼NE¼;
Sec. 5, lot 1;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼ NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, inclusive, E½, and E½ W½;
Sec. 8, W½E½ and W½.
T. 7 S., R. 22 E.,
Sec. 19, lots 1 to 4, inclusive, E½, and E½ W½;
Secs. 20, 21, and 22;
Sec. 23, NE¼NE¼, W½E½, W½, and SE¼SE¼;
Sec. 30, lots 1 to 4, inclusive, E½, and E½ W½;
Sec. 31, lots 1 to 4, inclusive, E½, and E½ W½.
T. 8 S., R. 22 E.,
Sec. 6, lots 1 to 5, inclusive, S½NE¼, and SE¼NW¼.

I-15302

T. 1 N., R. 12 E.,
Sec. 12;
Sec. 13, N½, NW¼SW¼, E½SW¼, and SE¼.
T. 1 S., R. 11 E.,
Sec. 18, S½NE¼ and N½SE¼.

U.S. Forest Service Sawtooth National Forest

I-15594

T. 8 N., R. 14 E.,
Sec. 21, W½NE¼, NW¼, and SE¼.

I-15302

T. 9 N., R. 14 E.,
Sec. 7, lots 1 to 4, inclusive;
Sec. 8, lots 1 to 4, inclusive;
Sec. 19, lots 1 to 4, inclusive;
Sec. 30, lots 1 to 4, inclusive, and E½SW¼;
Sec. 31, lots 1 to 4, inclusive, SE¼NW¼, E½SW½, and SE¼;
Sec. 32, SW¼SW¼.
T. 8 N., R. 14 E.,
Sec. 3, lots 3, 4, S½NW¼, and S½;
Sec. 6, lots 1 and 2;
Sec. 8;
Sec. 17, N½N½.
T. 7 N., 14 E.,
Sec. 2, SW¼;
Sec. 3, lots 1, 2, S½NE¼, and SE¼;
Sec. 11, S½NE¼, NW¼, N½SW¼, and SE¼;
Sec. 14, NE¼, E½SE¼;
Sec. 23, NE¼NE¼;
Sec. 24, E½ and N½NW¼;
Sec. 25, E½E½.
T. 10 N., R. 13 E.,
Sec. 6, lots 1, 2, SW¼NE¼, and SE¼;
Sec. 8, lots 1 to 30, inclusive, and SW¼ SW¼;
Sec. 17, NW¼NW¼;
Sec. 20, S½NE¼ and SE¼NW¼;
Sec. 21, S½SW¼NE¼, S½S½NW¼, N½ SW¼, and SE¼;
Sec. 22, lot 7, W¼SW¼, and SE¼SW¼;
Sec. 23, lots 4 and 5;
Sec. 25, lots 2, 5, and SW¼SW¼;
Sec. 26, lots 3 to 8, inclusive, lot 10, S½ NW¼, NW¼SW¼, and NE¼SE¼;
Sec. 27, lot 2, NW¼NE¼, S½NE¼, NW¼, and N½S½;
Sec. 28, NE¼, NE¼SE¼;
Sec. 35, N½NE¼, SE¼NE¼, and E½SE¼.

Patented Lands

I-15594

T. 6 S., R. 14 E.,
Sec. 30, lots 3, 4, and SE¼SW¼.

I-15302

T. 10 N., R. 13 E.,
Sec. 4, NE¼SW¼.
T. 1 N., R. 12 E.,
Sec. 9, NW¼.

The areas described aggregate 59,028.51 acres in Elmore, Gooding, Jerome, Camas, Lincoln, and Minidoka Counties.

2. At 9 a.m. on February 7, 1989, the Forest Service lands described in paragraph 1 will be opened to such forms of surface disposition as may by law be made of national forest lands.

3. At 9 a.m. on February 7, 1989, the public lands described in pargaraph 1 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. All valid applications received at or prior to 9 a.m. on February 7, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

January 3, 1989.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 89-529 Filed 1-10-89; 8:45 am]

BILLING CODE 4310-GG-M

43 CFR Public Land Order 6703

[NV-943-09-4214-10; Nev-047449]

Partial Revocation of Executive Order Dated April 17, 1926; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes an Executive order insofar as it affects 40 acres of public land withdrawn for a public water reserve. There is no evidence of water or a water source and, therefore, the land does not qualify for public water reserve status. The land has been identified for disposal through exchange. This action will open 40 acres to surface entry and non-metalliferous mining. The land has been and will remain open to metalliferous mining and mineral leasing.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702-784-5481.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Executive Order dated April 17, 1926, which withdrew public land for public water reserves is hereby revoked insofar as it affects the following described land:

Mount Diablo Meridian

T. 40 N., R. 66 E.,
Sec. 8, SE¼ SE¼.
The area described contains 40 acres in Elko County.

2. The land has been identified for disposal through exchange.

3. At 10 a.m. on February 7, 1989, the land described in paragraph 1, will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on February 7, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 10 a.m. on February 7, 1989, the land described in paragraph 1, will be opened to location and entry for non-metalliferous minerals under the United States mining laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. The land has been and will remain open to location and entry for metalliferous minerals under the United States mining laws and to applications and offers under the mineral leasing laws.

J. Steven Griles,

Assistant Secretary of the Interior.

January 3, 1989.

[FR Doc. 89-526 Filed 1-10-89; 8:45 am]

BILLING CODE 4310-HC-M

43 CFR Public Land Order 6704

[MT-930-09-4214-10; MTM 40740; MTM 070475]

Partial Revocation of Secretarial Order of May 24, 1909 and Public Land Order No. 3938; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a Secretarial order and a public land order insofar as they affect 20 acres of public lands withdrawn for Bureau of Reclamation's Milk River Project and 5 acres of public lands withdrawn by the Bureau of Land Management to protect recreation values. The lands are no longer needed for those purposes; however, they are part of a proposed exchange that will transfer several solid waste disposal sites to local authorities. This action will open the lands to surface entry and mining. They have been and will remain open to mineral leasing.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-657-6090.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and section 101 of the Omnibus Public Lands and National Forests Adjustments Act of 1988, 102 Stat. 4624, it is ordered as follows:

1. Secretarial Order of May 24, 1909, which withdrew public lands for the Bureau of Reclamation's Milk River Project is hereby revoked insofar as it affects the following described land:

(MTM 40740) Principal Meridian

T. 30 N., R. 28 E.,
Sec. 21, E½SE¼SE¼.

The area described contains 20 acres in Phillips County.

2. Public Land Order No. 3938, which withdrew certain lands to protect recreation values is hereby revoked insofar as it affects the following described land:

(MTM 070475) Principal Meridian

T. 25 N., R. 24 E.,
Sec. 28, N½SW¼SE¼SE¼.

The area described contains 5 acres in Phillips County.

3. At 9 a.m. on February 7, 1989, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on February 7, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 9 a.m. on February 7, 1989, the lands will be opened to location and entry under the United States mining laws, subject to valid existing rights. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

J. Steven Griles,

Assistant Secretary of the Interior.

January 3, 1989.

[FR Doc. 89-528 Filed 1-10-89; 8:45 am]

BILLING CODE 4310-DN-M

43 CFR Public Land Order 6705

[AK-932-09-4214-10; F-84742]

Withdrawal of Public Land for the Air Force Beaver Creek Research Site; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 3,630 acres of public land from surface entry and mining for a period of 20 years to protect the U.S. Air Force Beaver Creek Research Site. The land has been and will remain closed to mineral leasing.

EFFECTIVE DATE: January 11, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907-271-3342.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2571; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), and from leasing under the mineral leasing laws, to protect the integrity of the information being monitored by seismic equipment at a U.S. Air Force research site:

Cooper River Meridian

T. 15 N., R. 19 E.,
Sec. 14, W½E½ and W½, excluding PLO 5164;
Sec. 15, E½;
Sec. 20, E½SE¼;
Sec. 21, S½N½NE¼, S½N½, and S½, excluding PLO 5164;
Sec. 22, excluding PLO 5164;
Sec. 23, S½NE¼, NW¼, and S½, excluding PLO 5164;
Sec. 24, W½SW¼;
Sec. 25, NW¼NW¼;
Sec. 26, NE¼, E½NW¼, and NW¼NW¼;
Sec. 27, N½N½NE¼, NE¼NE¼NW¼, SW¼, and W½W½SE¼, excluding PLO 5164;
Sec. 28, N½NE¼, E½W½E½SW¼NE¼, E½E½SW¼NE¼, SE¼NE¼, N½NW¼, N½SW¼NW¼, NW¼SE¼NW¼, W½W½NE¼SE¼NW¼, NE¼SE¼, E½NW¼SE¼, E½W½NW¼SE¼, E½W½W½NW¼SE¼, and SE¼SE¼, excluding PLO 5164;
Sec. 29, NE¼NE¼;
Sec. 33, N½NE¼, N½SW¼NE¼, SE¼SW¼NE¼, SE¼NE¼, and N½NE¼SE¼;
Sec. 34, W½W½NE¼, NW¼, and N½N½SW¼, excluding PLO 5164.

The area described contains approximately 3,630 acres.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining and mineral leasing laws.

3. The withdrawal made by this order shall overlap but not otherwise affect PLO No. 6677 of May 23, 1988.

4. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

January 3, 1989.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 89-530 Filed 1-10-89; 8:45 am]

BILLING CODE 4310-JA-M

43 CFR Public Land Order 6706

[AK-932-09-4214-10; F-14988]

Withdrawal of Public Land for the Air Force Indian Mountain Research Site; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 4,606.70 acres of public land from surface entry and mining for a period of 20 years to protect the U.S. Air Force Indian Mountain Research Site. The land will be jointly administered by the U.S. Air Force and the Bureau of Land Management under two memorandums of understanding. The land has been and will remain closed to mineral leasing.

EFFECTIVE DATE: January 11, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), and from leasing under the mineral leasing laws, to protect the integrity of the information being monitored by seismic equipment at a U.S. Air Force Research site:

Kateel River Meridian

T. 7 N., R. 24 E. (Unsurveyed)

Sec. 13 S½S½NE¼SW¼, SE¼SE¼NW¼SW¼, NE¼NW¼SW¼SW¼, S½NW¼SW¼SW¼, S½S½SW¼, N½SE¼SW¼, SW¼SW¼NW¼SE¼, NW¼SW¼SE¼, NW¼NE¼SW¼SE¼, S½NE¼SW¼SE¼, S½S½SE¼, S½S½NE¼SE¼SE¼;

Sec. 14, SW¼NW¼SW¼, S½SE¼NW¼SW¼, SW¼SW¼, NW¼NE¼SE¼SW¼, S½NE¼SE¼SW¼, NW¼SE¼SW¼, S½SE¼SW¼, SW¼NW¼SW¼SE¼, SW¼SW¼SE¼, S½N½SE¼SW¼SE¼, S½SE¼SW¼SE¼, NE¼SE¼SE¼SE¼, S½S½SE¼SE¼;

Sec. 15, S½SW¼SW¼NE¼, SE¼SW¼SW¼NW¼, S½SE¼SW¼NW¼, S½N½S½SE¼NW¼, S½S½SE¼NW¼, SW¼, NW¼NE¼SE¼, S½NE¼NE¼SE¼, S½NE¼SE¼, W½SE¼, SE¼SE¼;

Sec. 16, S½NE¼NE¼SE¼, E½SW¼NE¼SE¼, SE¼NE¼SE¼, SE¼SE¼;

Sec. 21, NE¼NE¼, NE¼SE¼NE¼, NE¼NW¼SE¼NE¼, NE¼SE¼SE¼NE¼;

Sec. 22, N½, N½NE¼NE¼SW¼, N½NE¼SE¼, N½S½NE¼SE¼, S½SE¼NE¼SE¼, NE¼NW¼SE¼, N½NW¼NW¼SE¼, SE¼NW¼NW¼SE¼, NE¼SE¼NW¼SE¼;

Sec. 23, all;

Sec. 24, N½, SW¼, N½SE¼, SW¼SE¼, N½SE¼SE¼, N½SW¼SE¼SE¼, SW¼SW¼SE¼SE¼, N½N½SE¼SE¼SE¼;

Sec. 25, W½NW¼NE¼NE¼, W½SW¼SE¼NE¼, W½E½, W½, W½W½E½SE¼;

Sec. 26, all;

Sec. 27, S½S½NE¼NE¼NE¼, SE¼NW¼NE¼NE¼, S½NE¼NE¼, SE¼SW¼NW¼NE¼, SE¼NW¼NE¼, S½NE¼, NE¼NE¼SE¼NW¼, S½NE¼SE¼NW¼, S½SE¼NW¼, E½SW¼, E½NE¼NW¼SW¼, SE¼NW¼SW¼, NE¼SW¼SW¼, N½SE¼SW¼SW¼, SE¼SE¼SW¼SW¼, SE¼;

Sec. 34, N½NE¼, N½N½S½NE¼, E½NE¼NW¼, NW¼NE¼NW¼, N½SW¼NE¼NW¼, E½NE¼NW¼NW¼;

Sec. 35, NE¼NE¼NE¼, N½NW¼NE¼NE¼, NE¼SE¼NE¼NE¼, N½N½NW¼NE¼, N½N½NW¼, SW¼NW¼NW¼, NW¼SE¼NW¼NW¼;

Sec. 36, NE¼NE¼NW¼NE¼, W½NE¼NW¼NE¼, NW¼NW¼NE¼, N½SW¼NW¼NE¼, N½NW¼;

T. 7 N., R. 25 E. (Unsurveyed)

Sec. 18, S½N½SW¼SW¼, S½SW¼SW¼, SW¼NW¼SE¼SW¼, SW¼SE¼SW¼, W½SE¼SE¼SW¼, SE¼SE¼SE¼SW¼;

Sec. 19, W½NW¼NW¼NE¼, SW¼NW¼NE¼, W½SW¼NE¼, NW¼, N½SW¼, N½SW¼SW¼, N½NW¼SE¼SW¼, NW¼NE¼SE¼SW¼, NW¼NW¼SE¼, NW¼SW¼NW¼SE¼.

The area described contains approximately 4,606.70 acres.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining and mineral leasing laws.

3. The withdrawal made by this order shall overlap but not otherwise affect PLO No. 1910 of July 17, 1959, PLO No. 3942 of March 2, 1966, and PLO No. 5164 of February 28, 1972.

4. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

January 3, 1989.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 89-531 Filed 1-10-89; 8:45 am]

BILLING CODE 4310-JA-M

VETERANS ADMINISTRATION

48 CFR Part 817

Acquisition Regulations Pertaining to Multiyear Contracts

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The Veterans Administration (VA) is amending the VA Acquisition Regulation to implement Pub. L. 100-322 which authorizes the use of multiyear contracts for items and services for use at VA medical facilities. This regulation will provide the means for using the multiyear contracting method.

EFFECTIVE DATE: January 4, 1989.

FOR FURTHER INFORMATION CONTACT: Chris Figg, Chief, Acquisition Policy Staff (93), Office of Acquisition and Materiel Management, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC, (202) 233-3054.

SUPPLEMENTARY INFORMATION:

I. Background

The Veterans Benefits and Services Act of 1988, Pub. L. 100-322, authorizes the use of multiyear contracts for acquiring supplies and services for use in VA health care facilities when determined in the best interest of the VA. This regulation prescribes criteria that must be considered in determining the desirability for using multiyear contracts for a given acquisition as well as prescribing approval levels for its use.

II. Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this rule is exempt from sections 3 and 4 of Executive Order 12291.

III. Regulatory Flexibility Act (RFA)

Because this rule does not come within the term "rule" as defined in the RFA (5 U.S.C. 601(2)), it is not subject to the requirements of that act. In any case, this change will not have a significant impact on a substantial number of small entities because the provisions implement the requirements of the FAR. The provisions are primarily internal procedures which will not impact the private sector.

IV. Paperwork Reduction Act

The Paperwork Reduction Act does not apply to these regulations.

List of Subjects in 48 CFR Part 817:

Government procurement.

Approved: January 4, 1989.

Thomas K. Turnage,

Administrator.

48 CFR Part 817, is amended as set forth below:

PART 817—[AMENDED]

1. The authority citation for Part 817 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

2. Section 817.102-1 is revised to read as follows:

817.102-1 Uses.

(a) Pursuant to Title 38, United States Code, Chapter 1, Section 114 (as amended by Pub. L. 100-322), multiyear contracting not exceeding 5 years is authorized for obtaining supplies and services for use in Veterans Administration health care facilities when the Administrator has made the following determinations:

(1) Appropriations are available for obligation for the total payments for the fiscal year the contract is entered into plus the estimated amount of any cancellation charges.

(2) The contract is in the best interest of the Government due to the effect it would have in:

(i) Reducing cost;

(ii) Achieving contract administration and other efficiencies;

(iii) Increasing quality contract performance;

(iv) Encouraging effective competition.

(3) During the contract period:

(i) There is a continuing need for the supplies or services;

(ii) There is little likelihood of substantial changes in need for the supplies and services in terms of quantity or rate of delivery; and

(iii) The specifications for the supplies or services are expected to be reasonably stable.

(4) The risks relating to a prospective contractor's ability to perform in accordance with the specifications and other contract terms are not excessive;

(5) The use of a multiyear contract will not inhibit competition from small business firms;

(6) In the case of a pharmaceutical item for which a patent has expired less than 4 years before the solicitation issue date, there is no substantial likelihood that increased competition will occur during the term of the contact that would make the contract prices higher than would be reasonable.

(b) The authority of the Administrator to enter into multiyear contracts and to make the determinations specified in 817.102-1(a) of this section is delegated as follows:

(1) *Heads of contracting activities.* For contracts not requiring legal/technical reviews pursuant to 801.602-70 (for purposes of determining applicability of the thresholds, the total dollar amount of the contract over its full multiyear term will be used), and which do not contain a first year cancellation ceiling which exceeds 20 percent of the total dollar amount of the contract over the full multi-year term.

(2) *Director, Office of Acquisition and Materiel Management,* will approve all proposed uses of multiyear contracts not authorized for approval by heads of contracting activities. For approval purposes, the head of the contracting activity will justify and document the use of a multiyear contract against each of the criteria specified in 817.102-1 (a)(1) through (a)(6) of this section. The justification will additionally delineate the cancellation ceiling and the method used for calculating that ceiling and will specify the advantages of multiyear contracts over other alternative methods, e.g., option year contracts.

(c) Cancellation ceilings will be carefully developed in accordance with FAR 17.103-1 and VAAR 817.103-1.

817.202 [Amended]

3. Section 817.202 is amended by removing the words "Office of Procurement and Supply" wherever they appear, and adding in their place the words "Office of Acquisition and Materiel Management". Paragraph (b) is also removed and the designation for paragraph (a) is removed.

817.402 [Amended]

4. Section 817.402 is amended by removing the words "Office of Procurement and Supply" wherever they appear, and adding in their place the words "Office of Acquisition and Materiel Management".

[FR Doc. 89-518 Filed 1-10-89; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 580

[Docket Number 87-09: Notice 4B]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration.

ACTION: Grant of Petition for Extension of Time (Arkansas).

SUMMARY: This is in response to a petition for an extension of time filed by the Arkansas Department of Finance and Administration, Revenue Division, Office of Motor Vehicles (Arkansas). Arkansas cannot conform its titles to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Arkansas an extension of time, until March 31, 1990, to achieve compliance. Because Arkansas has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted Arkansas' petition for an extension of time. Arkansas has until March 31, 1990 to revise its titles to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle

Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to such compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

Arkansas' Petition

The Arkansas Department of Finance and Administration, Revenue Division, Office of Motor Vehicles (Arkansas) submitted a petition for an extension of time. In support of its petition, Arkansas states that upon enactment of the Truth in Mileage Act it immediately began to revise its titles procedures and documents to conform to the Act. Arkansas redesigned the title to incorporate what it believed was all the necessary information required by the Act and purchased 1.5 million of the redesigned titles. Arkansas anticipates that the inventory of redesigned titles will be depleted in February or March 1990, and therefore, requests that it be granted an extension of time until March 31, 1990.

NHTSA's Response to the Petition

NHTSA finds that Arkansas has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

After enactment of the Truth in Mileage Act, recognizing that it would need a new supply of titles and seeking to conform this new supply to the Federal criteria, Arkansas redesigned its title to incorporate what it believed was all the necessary information required by the Act. This information included an abbreviated odometer disclosure statement in each reassignment space on the reverse of the title and a space for the odometer reading and model on the face of the title. Subsequent to the publication of the final rule, Arkansas again redesigned its title to incorporate additional information required by the rule. Arkansas submitted a copy of this title specimen to NHTSA for review. Upon completion of this review, the State will be notified by letter as to the acceptability of the proposed title.

In light of Arkansas' past and planned actions, and in order to allow Arkansas to expend its current supply of titles which it ordered prior to the publication of NHTSA's final rule, we grant Arkansas' request for an extension of time until March 31, 1990, to revise its titles to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e)

Issued on January 6, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89-556 Filed 1-10-89; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 580

[Docket Number 87-09: Notice 4C]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration.

ACTION: Grant of petition for extension of time (Idaho).

SUMMARY: This is in response to a petition for an extension of time filed by the Idaho Transportation Department (Idaho). Idaho cannot conform its titles to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Idaho an extension of time, until August 1990, to achieve compliance. Because Idaho has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and intends to take additional action while the extension is in effect, we have granted Idaho's petition. Idaho requested an extension until August 1, 1990 to revise its titles to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(e) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to such compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer rules, the agency published final rules, which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

Idaho's Petition

The Idaho Transportation Department (Idaho) submitted a petition for an extension of time. In support of its petition, Idaho states that for some time, it had realized that it had fallen behind in the development and design of a "state of the art" certificate of title. Therefore, it had worked for many months to create a document that would discourage odometer fraud while allowing easy detection if the document security had been compromised. After completing its specifications and plans to implement the new form, Idaho learned that NHTSA was about to publish a final rule concerning titles and odometer disclosure information. The State had made several improvements in its title and rather than risk running out of titles, Idaho decided to have a new supply of titles printed. Idaho now has a stock of 500,000 titles and anticipates that these titles will last approximately one and one-half years. Therefore, Idaho requests that it be granted an extension of time until August 1990.

NHTSA's Response to the Petition

NHTSA finds that Idaho has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

Recognizing that it would need a new supply of titles, Idaho redesigned it title, incorporating several improved features. Idaho had its titles printed by a secure printing process. Some of the security features that Idaho adopted include: visible fibers, a security thread, background inks that will show attempts to alter information chemically or by erasure, and a microprint line. Idaho added a space on the face of its title for an odometer reading at the time the title is issued by the State. Idaho has also added space on the reverse side of the title for an odometer reading at the time of the first reassignment and at the time

of subsequent reassignments. However, in order to conform with the Federal requirements, Idaho must make additional revisions to the title document. The State will be notified by letter of the changes needed.

In light of Idaho's past actions and its expressed intention to make additional changes, and in order to allow Idaho to expend its current supply of titles which it had ordered prior to the publication of NHTSA's final rule, we grant Idaho's request for an extension of time until August 1, 1990, to revise its titles to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e).

Issued on January 6, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89-557 Filed 1-10-89; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 580

[Docket Number 87-09]: Notice 4A]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration.

ACTION: Grant of petition for extension of time (Mississippi).

SUMMARY: This is in response to a petition for an extension of time filed by the Mississippi State Tax Commission (Mississippi). Mississippi cannot conform its laws and its titles to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Mississippi an extension of time, until January 1, 1990, to achieve compliance. Because Mississippi has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted Mississippi's petition for an extension of time until January 1, 1990 to revise its laws and its titles to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to achieve such compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules, which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

Mississippi's Petition

The Mississippi State Tax Commission (Mississippi) submitted a petition for an extension of time. In support of its petition, Mississippi states that legislation will be required to conform its laws. Currently, legislation is being drafted. It will be submitted to the 1989 Regular Session of the Mississippi legislature which convenes in January 1989. In addition, Mississippi states that it has an inventory of title documents necessary to fulfill its requirements until January 1, 1990. Therefore, Mississippi requests that it be granted an extension of time until January 1, 1990.

NHTSA's Response to the Petition

NHTSA finds that Mississippi has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

After NHTSA issued its NPRM to implement the Truth in Mileage Act, recognizing that it would need a new supply of title and seeking to conform this new supply to the Federal criteria, Mississippi wrote to NHTSA requesting assistance. In October 1987, Mississippi added a space for the buyer's signature on its titles. Because the title already contained all the information required by the current Federal regulation, NHTSA advised Mississippi that a transferor may use the title in lieu of a separate odometer disclosure statement.

On November 14, 1988, Mississippi provided NHTSA with a copy of draft of a revised title. This draft accurately reflects the requirements of the final rule. Mississippi is currently drafting legislation which would allow the use of these revised titles. It will submit this legislation to the State legislature which convenes in January 1989.

In light of Mississippi's past and planned actions, and in order to allow Mississippi to expend its current supply of titles, we grant Mississippi's request for an extension of time until January 1, 1990, to revise its laws and its titles to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e).

Issued on January 6, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89-558 Filed 1-10-89; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 580

[Docket No. 87-09: Notice 4D]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration.

ACTION: Grant of petition for extension of time (Utah).

SUMMARY: This is in response to a petition for an extension of time filed by the Utah State Tax Commission (Utah). Utah cannot conform its laws and its titles to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Utah an extension of time, until July 1989, to achieve compliance. Because Utah has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has advised us of the steps to be taken while the extension is in effect, we have granted Utah's petition for an extension of time until July 1, 1989 to revise its laws and its titles to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to such compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

Utah's Petition

The Utah State Tax Commission (Utah) submitted a petition for an extension of time. In support of its petition, Utah states that it has proposed amendments to its odometer disclosure statute that are consistent with the new Federal law and regulations. In addition, Utah has designed a new title that it believes conforms to the new Federal requirements. Utah estimates that its existing supply of titles will last until June 1989. Therefore, Utah requests that it be granted an extension of time until July 1989.

NHTSA's Response to the Petition

NHTSA finds that Utah has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

To meet the requirements of the new Federal law and regulations, Utah has redesigned its title document. The draft title which Utah included with its petition does not appear to conform with the Federal requirements; however, only minor changes appear to be needed. In addition, Utah has proposed amendments to its odometer disclosure statutes. The Utah legislature will consider the proposed amendments when it convenes in January 1989.

In light of Utah's past and planned actions, and in order to allow Utah to expend its current supply of titles, we grant Utah's request for an extension of time until July 1, 1989, to revise its laws and titles to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e).

Issued on January 6, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89-559 Filed 1-10-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Export of Bobcat Taken in 1988 and Subsequent Seasons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) regulates international trade in certain animal and plant species. As a general rule, exports of animals and plants listed in Appendix II of the Convention may occur only if (1) a Scientific Authority has advised a permit-issuing Management Authority that such export will not be detrimental to the survival of the species, and (2) if the Management Authority is satisfied that the animals or plants were not obtained in violation of laws for their protection.

This document announces final findings by the Scientific Authority and Management Authority of the United States that approve the export of bobcat harvested in the 1988 and subsequent years on the Wind River Indian Reservation, Wyoming, by enrolled members of the Arapahoe and Shoshone Tribes. This rule also stipulates that monitoring procedures previously established for other States and Indian Nations or Tribes be extended to include the Wind River Indian Reservation, Wyoming.

In a January 5, 1984, **Federal Register** notice (49 FR 590), the Service published a rule granting export approval for bobcats (*Lynx rufus*) and certain other Convention-listed species from specified States and Indian Nations and Tribes for the 1983-84 and subsequent harvest seasons. This document adds the Wind River Indian Reservation, Wyoming, to the list of States and Indian Nations and Tribes for which the export of bobcats is approved.

DATE: January 11, 1989.

ADDRESSES: Please send correspondence concerning this rule to the Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC, 20240. Materials received will be available for public inspections from 8:00 a.m. to 4:00 p.m., Monday through Friday, at the Office of Scientific Authority, Room 537, 1717 H Street NW., Washington, DC or at the Office of Management Authority, Room 400, 1375 K Street Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Scientific Authority Finding—Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202-653-5948).

Export permits—Mr. Richard K. Robinson, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202) 343-4955.

State Export Programs—Mr. S. Ronald Singer, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202) 343-4963.

SUPPLEMENTARY INFORMATION:

The Convention regulates import, export, reexport, and introduction from the sea of certain animal and plant species. Species for which trade is controlled are included in three appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that although not necessarily now threatened with extinction may become so unless trade in them is strictly controlled. Appendix II also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other species). Appendix III includes native species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties in controlling trade.

In the January 5, 1984, and the August 18, 1983, (48 FR 37494) **Federal Register** documents, the Service announced the decision, from a review of listed species concluded at the Fourth Meeting of the Conference of the Parties in Botswana, that each of the specified furbearer species or geographically separate populations addressed in those export findings, including the bobcat, should be regarded as listed in Appendix II

because of its similarity in appearance to other listed species or populations. As indicated in those documents, the Conference of the Parties adopted a resolution accepting the report of the Central Committee on the 10-year review of species listed in Appendices I and II. The report included recommendations that these populations or species should be considered as listed in Appendix II only because of similarity in appearance, if they were to be retained in that Appendix.

The January 5, 1984, document described how the Service, as Scientific Authority, planned to monitor both the status of these species and their trade on an annual basis so that it could detect any significant downward trends in populations and, where necessary, institute more restrictive export controls in response to them. The document also described how the Service, as Management Authority, would determine if specimens had been lawfully acquired on the basis of mandatory tagging requirements.

This previously described monitoring procedure will be extended to include the Wind River Indian Reservation, Wyoming.

This is the second **Federal Register** document concerning the Service's findings on export of bobcats taken on the Wind River Indian Reservation, Wyoming, in the 1988 and subsequent harvest seasons. The first document (53 FR 33156; August 30, 1988) announced the Service's intention to develop findings on the export of bobcats taken on the Wind River Indian Reservation, Wyoming, by enrolled members of the Arapahoe Shoshone Tribes.

The purpose of this rule is to add the Wind River Indian Reservation, Wyoming, to those States and Indian Tribes and Nations from which the Service has approved the export of bobcats in the 1988–89 and subsequent seasons. The approved entities were identified in the January 5, 1984, **Federal Register** (49 FR 590), are listed in 50 CFR 23.52, and additional entities were added in a March 24, 1988, **Federal Register** notice (57 FR 9631).

Comments and Information Received

No comments or information were received concerning the August 30, 1988, **Federal Register** (53 FR 33156) notice proposing export of bobcats from the Wind River Indian Reservation.

Management Authority Determinations

Exports of Appendix II species are to be allowed under the Convention only if the Management Authority is satisfied that the specimens were not obtained in contravention of laws for the protection of the listed wildlife or plants. The Service, therefore, must be satisfied that the pelts, hides, or products of the furbearer in question were not obtained in violation of State or Federal law, in order to allow export. A system to determine whether specimens have been lawfully acquired on the basis of tagging requirements was stipulated in the January 5, 1984, **Federal Register** (49 FR 590).

The Service has continued to monitor the implementation of these regulations and considers that these programs provide reasonable assurance that bobcat specimens being exported were not obtained in violation of laws established for their protection.

Scientific Authority Advice

Article IV of the Convention requires that export permits for any specimen of a species included in Appendix II shall only be granted when certain findings have been made by the Scientific Authority and Management Authority of the exporting country. The Scientific Authority must advise "that such export will not be detrimental to the survival of that species" before a permit can be granted by the Management Authority. Consistent with the determination that the bobcat is listed to enable trade in other species to be effectively controlled, the Scientific Authority considers this control aspect when advising on non-detriment.

Bobcat population estimates for the Wind River Indian Reservation, Wyoming, were based on the relationship between population density from other studies in the State and habitat types and distributions on the Reservation. This information has been supplemented with data on reproductive rates and age structure of the population obtained from harvested bobcats, and with the relative number of bobcats trapped per trapping effort. The tagging and harvest assessment programs will provide additional means of monitoring any effects of the harvest program.

The Service continues to believe that the bobcat is properly listed for reasons of similarity of appearance, and that with the tagging of pelts and hides as described in the Management Authority determinations (49 FR 590), the export of those tagged animals will not reduce the effectiveness of the Convention in controlling trade in other listed species. The Wind River Indian Reservation, Wyoming, has established a management program to properly mark all bobcat hides or pelts harvested so their export will not be detrimental to the species that the bobcat is listed to protect, and to provide information to indicate whether the harvest will threaten the survival of the species.

Export Approval

The Service approves exports of bobcats harvested in the 1988 and subsequent harvest seasons on the Wind River Indian Reservation, Wyoming, by enrolled members of the Arapahoe and Shoshone Tribes on the basis that both the Scientific Authority and Management Authority criteria have been satisfied.

This approval is subject to revision prior to any subsequent taking season in any particular State, Indian Tribe, or Indian Nation if a review of information reveals that Management Authority or Scientific Authority findings in favor of export must be changed. The Service does not grant general approval for export of specimens of this species originating in any State or Indian Nation not named for one or more of the following reasons: (1) The species does not occur there, (2) no harvest of the species is allowed by the State or Indian Nation or Tribe, or (3) the Service does not have current information needed for Scientific Authority and Management Authority findings.

The Department has determined, within the meaning of 5 U.S.C. 553(d) (1) and (3) of the Administrative Procedure Act, to make these findings and rule effective immediately. By making this rule effective immediately, a restriction on international trade will be lifted from individual trappers on the Wind River Indian Reservation, Wyoming, and fur dealers within Wyoming. Furthermore, this document represents the final administrative step in authorizing the export of bobcats from Service-approved States and Indian Nations and Tribes in accordance with the Convention. It is the Department's opinion that a delay in the effective date of the regulations after this rule is published could affect the export of pelts taken in the harvest season that is about to begin in the State and Indian Reservation. It could also adversely affect the species by reducing compliance with Service-mandated, Indian Nation tagging requirements. Furthermore, good cause exists for making these findings effective as soon as possible to avoid economic injury to individual trappers, dealers, or other small entities that are directly affected by the finding. It should be noted that making this finding and rule effective immediately will not adversely affect the species involved, in view of the findings of nondetriment contained herein.

Note.—The Department has previously determined that the export of certain species of various States and Indian Nations or Tribes, taken in the 1983–1984 and subsequent harvest seasons, was not a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act and, therefore, the preparation of an Environmental Impact Statement was not required (48 FR 37494). The Department has also determined that such harvest is not a major rule under Executive Order 12291 and does not have a significant economic affect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601).

This rule does not contain any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

This document was prepared by Mr. S. Ronald Singer, Office of the Management Authority, and Dr. Charles W. Dane, Office of the Scientific Authority, under the authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*)

List of Subjects in 50 CFR Part 23

Endangered and threatened wildlife, Exports, Fish, Imports, Plants (agriculture), Treaties.

Regulation Promulgation

For reasons set out in the preamble of this document, Part 23 of Title 50, Code of Federal Regulations is amended as follows:

PART 23—ENDANGERED SPECIES CONVENTION

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249; and Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531 *et seq.*

Subpart F—Export of Certain Species

2. In § 23.52 Bobcat (*Lynx rufus*), paragraphs (a) and (b) are revised, and paragraphs (c) through (h) are removed as follows:

§ 23.52 Bobcat (Lynx rufus).

* * * * *

(a) States and Harvest Seasons Approved for Export of Bobcat From the United States.

	1977–78	1978–79	1979–80	1980–81	1981–82	1982–83	1983 and subsequent	1987 and subsequent	1988 and subsequent
Alabama	+	+	+	+	+	+	+	+	+
Arizona	+	+	+	+	+	+	+	+	+
Arkansas	+	+	+	+	+	+	+	+	+
California	+	+	+	+	+	+	+	+	+
Colorado	+	+	+	+	+	+	+	+	+
Florida	+	+	E	+	+	+	+	+	+
Georgia	+	+	+	+	+	+	+	+	+
Idaho	+	+	+	+	+	+	+	+	+
Kansas	+	+	+	+	+	+	+	+	+
Kentucky	–	–	–	–	–	–	–	+	+
Klamath Tribe	–	–	–	–	+	+	+	+	+
Louisiana	+	+	+	+	+	+	+	+	+
Maine	+	+	+	+	+	+	+	+	+
Massachusetts	+	+	E	+	+	+	+	+	+
Michigan	+	+	+	+	+	+	+	+	+
Minnesota	+	+	+	+	+	+	+	+	+
Mississippi	+	+	+	+	+	+	+	+	+
Missouri	–	–	–	+	+	+	+	+	+
Montana	+	+	+	+	+	+	+	+	+
Navajo Nation	+	+	+	+	+	+	+	+	+
Nebraska	+	+	+	+	+	+	+	+	+
Nevada	+	+	+	+	+	+	+	+	+
New Hampshire	–	–	–	+	+	+	+	+	+
New Mexico	+	+	E	+	+	+	+	+	+
New York	+	+	+	+	+	+	+	+	+
North Carolina	+	+	+	+	+	+	+	+	+
North Dakota	+	+	E	+	+	+	+	+	+
Oklahoma	–	–	+	+	+	+	+	+	+
Oregon	+	+	E(1)	+	+	+	+	+	+
Penobscot Nation	–	–	–	–	–	–	+	+	+
South Carolina	+	+	+	+	+	+	+	+	+
South Dakota	+	+	+	+	+	+	+	+	+
Tennessee	+	+	+	+	+	+	+	+	+
Texas	+	+	E(2)	+	+	+	+	+	+
Utah	–	–	+	+	+	+	+	+	+
Vermont	+	+	+	+	+	+	+	+	+
Virginia	+	+	+	+	+	+	+	+	+
Washington	+	+	+	+	+	+	+	+	+
West Virginia	+	+	+	+	+	+	+	+	+
Wisconsin	+	E	+	+	+	+	+	+	+
White Mt Tribe	–	–	–	–	–	–	–	+	+
Wind River Reservation	–	–	–	–	–	–	–	–	+
Wisconsin	+	+	E	+	+	+	+	+	+
Wyoming	+	+	+	+	+	+	+	+	+

+ Export approval.
– Export not approved.
E 1979–80 bobcat export enjoined by U.S. District Court, District of Columbia.
E(1) As above but for eastern portion of State.
E(2) As above but for high plains ecological area.

(b) *Condition on export:* Each pelt must be clearly identified as to species; State, Indian Tribe, or Indian Nation of origin; and season of taking by a permanently attached, serially numbered tag of a type approved by and attached under conditions established by the Service. Exception to tagging requirement: finished furs and fully manufactured fur products may only be exported from the United States when the State, Indian Tribe, or Indian Nation export tags, removed from the hides used to manufacture the product being exported, are surrendered to the Service at the time of export. Such tags must be removed by cutting the tag strap on the female side next to the locking socket of the tag so the locking socket and locking tip remain joined.

(c) through (h) [Removed]

Dated: November 22, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-514 Filed 1-10-89; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

Groundfish of the Gulf of Alaska, and Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of clarification.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has decided to retain the existing definitions of "directed fishing" applicable to the groundfish fisheries of the Gulf of Alaska and the Bering Sea and Aleutian Islands Area. The Regional Director has reviewed changes to these definitions recommended by the North Pacific Fishery Management Council (Council) and has determined that the recommended changes would encourage overharvest and waste of high-value bycatch species of low abundance. This notice is intended to notify the public that the existing definitions will apply until further notice and will be enforced as written.

DATE: Effective January 6, 1989.

FOR FURTHER INFORMATION CONTACT: Dale R. Evans (Chief, Fisheries Management Division, Alaska Region, NMFS) 907-586-7414.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone (EEZ) of the Gulf of Alaska and the Bering Sea-Aleutian Islands Management Area are managed under the Fishery Management Plans for Groundfish of the Gulf of Alaska and Groundfish of the Bering Sea and Aleutian Islands Area (FMP's). The FMP's were prepared by the Council and are implemented by regulations for the domestic fisheries at 50 CFR Parts 672 and 675. Definitions of "directed fishing" are codified in §§ 672.2 and 675.2. (53 FR 44011 November 1, 1988, 50 FR 46072 (November 6, 1985, respectively).

At its June, 1988 meeting, the Council requested that the Regional Director amend the "directed fishing" definitions. After careful review, the Regional Director has determined that the Council's recommendation would encourage overharvest of high-value bycatch species, require additional at-sea discard of groundfish species, and result in additional waste of valuable groundfish resources. Therefore, the Regional Director rejects the Council's recommendation and announces that the current definitions will remain in effect until further notice and will be enforced as written.

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

Dated: January 5, 1989.

Richard B. Stone,

Acting Director, Office of Fisheries Conservation and Management.

[FR Doc. 89-542 Filed 1-6-89; 1:13 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 7
Wednesday, January 11, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Commodity Credit Corporation

7 CFR Parts 17 and 1493

[PL 480, GSM-102, GSM-103, EEP, DEIP, and SOAP Export Programs]

Duty Drawback and USDA Export Programs

AGENCY: Office of the Secretary and Commodity Credit Corporation, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Agriculture is considering a revision to its export programs which would require that program participants, as a condition of program participation, agree that they will not claim the benefit of duty drawback with respect to any U.S. agricultural exports made under the program.

DATE: Comments must be received on or before April 11, 1989.

ADDRESS: Mail comments to the General Sales Manager, Foreign Agricultural Service, USDA, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: L.T. McElvain, Director, CCC Operations Division, Export Credits, Foreign Agricultural Service, Washington, DC 20250, Tel: (202) 447-6225 or John Reddington, Deputy Assistant Administrator, Commodity & Marketing Programs, Foreign Agricultural Service, Washington, DC 20250, Tel: (202) 447-7791.

SUPPLEMENTARY INFORMATION: The Department of Agriculture has received comments expressing concern that exporters who export U.S. agricultural commodities under the Department's export programs may be receiving a drawback of import duties paid on the importation of certain fungible commodities. Although this is in accordance with the U.S. custom laws (19 U.S.C. 1313), these commentators argue that this situation contravenes the intent and purposes of the Department's export programs. The commentators have asked the Department to take action which would prevent, with respect to a specific transaction, both participation in a Department program and receipt of drawback.

In view of the comments that the Department has received with regard to the drawback concerns, the public is invited to submit comments generally on this issue. Comments are specifically invited on the economic and programmatic impact, if any, on exports of U.S. agricultural commodities and the Department's export programs: (1) Of the current system under which exports under these programs may benefit from duty drawback; and (2) if program participants were required to agree, as a condition of program participation, that they would not claim duty drawback with respect to U.S. agricultural exports under these programs. The Department also invites comments with respect to the extent that duty drawback is now being claimed on exports made under the above programs.

The proposed revision would apply to the following export programs:

(1) 7 CFR Part 17–Sales of Agricultural Commodities Made Available Under Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended.

(2) 7 CFR Part 1493–Commodity Credit Corporation (CCC) Export Credit Guarantee Program (GSM-102) and CCC Intermediate Export Credit Guarantee Program (GSM-103).

(3) Export Enhancement Program (EEP).

(4) Sunflower Oil Assistance Program (SOAP).

(5) Dairy Export Incentive Program (DEIP).

Each person submitting suggestions or comments is requested to include his/her name and address and give reasons for the comments or suggestions. Copies of all written communications will be available for examination by interested persons in Room 4503, South Building, U.S. Department of Agriculture during regular business hours.

Signed at Washington, DC, on December 2, 1988.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 89-535 Filed 1-10-89; 8:45 am]

BILLING CODE 3410-01-M; 3410-05-M

Agricultural Marketing Service

7 CFR Part 989

[FV-88-135PR]

Raisins Produced From Grapes Grown in California; a Change to the Administrative Rules and Regulations Regarding the Raisin Diversion Program Final Redemption Date

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a change to the administrative rules and regulations of the California raisin marketing order. This action would change the final redemption date for Raisin Diversion Program (RDP) certificates from January 15 to December 15. December 15 would remain the final redemption date thereafter. This action was unanimously recommended by the Raisin Administrative Committee (Committee), the agency responsible for local administration of the order. This change is intended to improve the efficiency of the program.

DATE: Comments must be received by February 10, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085-S, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

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

This rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512-1 and has been determined to be a "non-

major" rule under criteria contained therein.

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

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

There are approximately 23 handlers of raisins who are subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California raisins may be classified as small entities.

This proposed rule invites comments on a change to the administrative rules and regulations of the raisin marketing order. This action was unanimously recommended by the Committee. The change would revise the redemption date for RDP certificates from January 15, 1990 to December 15, 1989, if a RDP were established for the next crop year. December 15 would remain the final redemption date thereafter.

The RDP gives producers the means of voluntarily reducing the quantity of grapes grown for drying into raisins. Producers wishing to participate in the RDP divert their grape crop from production. In return, the producer receives the equivalent quantity of raisins from the previous year's reserve pool, which is represented by a diversion certificate, to sell to handlers as though the raisins were produced in the current crop year. The producer is paid by a handler the established field price minus the harvest costs determined for that year. Current rules and regulations require handlers to redeem diversion certificates by January 15.

When RDP certificates are redeemed, the handler receives a quantity of reserve pool raisins equal to the amount of diverted raisins represented on the diversion certificate. Prompt redemption of diversion certificates, as proposed in this action, would allow equity holders in the reserve pool to receive payment as early as possible for those reserve pool raisins utilized to redeem diversion certificates. This action would also tend to decrease storage and insurance costs related to reserve pool raisins because those raisins would be stored in the reserve pool for a reduced period of time.

The information collection requirements contained in the section of the regulations that would be amended, if the proposed rule is adopted, have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB No. 0581-0093.

Based on the foregoing and other available information, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 989

California, Grapes, Marketing agreements and orders, Raisins.

For the reasons set forth in the preamble, 7 CFR Part 989 is proposed to be amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

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

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

Subpart—Administrative Rules and Regulations

2. Section 989.156 is amended by revising the last sentence of paragraph (k) to read as follows:

§ 989.156 Raisin diversion program.

* * * * *

(k) * * * Diversion certificates will only be valid and honored if presented to the Committee for redemption on or before December 15 of the crop year for which they were issued.

* * * * *

Dated: January 6, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-534 Filed 1-10-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Policy Development and Research

24 CFR Part 401

[Docket No. R-89-1435; FR-2585]

Supplemental Assistance for Facilities To Assist the Homeless; Cross Reference

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Proposed rule; cross reference.

SUMMARY: In a Notice published elsewhere is today's **Federal Register**, HUD is announcing changes for immediate effect to the guidelines for the Supplemental Assistance for Facilities to Assist the Homeless program (SAFAH). (The guidelines for SAFAH were published on October 19, 1987 (52 FR 38880).) The changes implement amendments to the program by the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988). Although the guidelines, as well as the changes announced today, were published for immediate effect, the public is invited to comment by March 27, 1989, on the guidelines and changes for consideration in developing a final rule within 12 months of enactment of the McKinney legislative amendments.

Dated: January 5, 1989.

Kenneth J. Beirne,

Assistant Secretary for Policy Development and Research.

[FR Doc. 89-554 Filed 1-10-89; 8:45 am]

BILLING CODE 5210-01-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. N-89-1911; FR-2603]

Section 8 Housing Assistance Payments Program; Fair Market Rents for New Construction and Substantial Rehabilitation—Providence, RI; Special Revisions for Fiscal Year 1987

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed notice.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to establish Fair Market Rents (FMRs) periodically, but not less

frequently than annually. This document proposes to amend the Fiscal Year 1987 Fair Market Rent Schedule to establish new FMRs for the Providence, Rhode Island market area for that fiscal year. These rents are necessary to provide FMRs more comparable to market rents for new construction in this market area.

DATE: Comments due: February 10, 1989.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Offices of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Insured Multifamily Housing Development, 451 Seventh Street SW., Washington, DC 20410-0500. Telephone (202) 426-7624. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (the Act) authorizes a system of housing assistance payments to aid lower income families in renting decent, safe, and sanitary housing. These programs, known collectively as the Section 8 Housing Assistance Payments Program, provide assistance payments for lower income families for a variety of housing options, including new construction and substantial rehabilitation.

Under these programs, HUD or public housing agencies (PHAs) make rental assistance payments on behalf of eligible families to owners. When families lease an eligible unit, the housing assistance payment is made and is based upon the difference between the total housing expense and the total family contribution. Initial contract rents, plus an allowance for utilities generally may not exceed area-wide Fair Market Rents (FMRs) established by the Department. FMRs are based primarily on the level of rentals paid for recently completed or newly constructed dwelling units of modest design within each market area as determined by HUD Field Office staff. For the FY 1987 FMRs and FY 1987 FMRs previously promulgated by the Department (see the April 26, 1988 **Federal Register**, 53 FR 14954), these rents reflected the Department's cost containment efforts in relation to housing assistance provided in the Section 8 New Construction and Substantial Rehabilitation Programs.

This Document

This document announces a special revision to the Fiscal Year 1987 Fair Market Rent schedules applicable to the Providence, Rhode Island market area. These FMRs reflected data submitted by the Providence Office. Where sufficient market rental comparables do not exist, HUD procedures permit the use of an interpolation technique to arrive at indicated FMRs. Although the use of interpolation and adjustments to establish rents are sound principles and techniques, the best data for "market rents" would be that from recently constructed projects, as it would necessarily reflect current conditions in the marketplace with respect to financing, vacancy rates, etc., and would provide a degree of assurance that rents so derived should be adequate to support new projects, all factors being equal.

The Providence Office requested that the Department establish new rents for the Providence, Rhode Island market area. Careful analysis of this request and reanalysis of the FY 1987 FMRs for this market area indicate that the rents resulting from the application of the aforementioned techniques, when modified to reflect the Department's cost containment policies, are not adequate, even when it is clear that there has been compliance with the Department's cost containment guidelines with respect to project design. Therefore, an upward adjustment of the FY 1987 FMRs for this market area is needed. Accordingly, the Department is proposing a revision of the FY 1987 schedule applicable to the Providence, Rhode Island market area. It is intended that when this schedule is published for effect, its applicability will be the same as set forth in the preamble to the original FY 1987 schedule, published on April 26, 1988, at 53 FR 14954.

Other Information

HUD regulations in 24 CFR Part 50, implementing section 102(2)(c) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the FMRs established in this Notice are within the exclusion set forth in § 50.20(l), no environmental assessment is required, and no environmental finding has been prepared.

The Catalog of Federal Domestic Assistance Program number and title for the activities covered by this Notice are 14.156, Lower Income Housing Assistance Program (section 8).

Accordingly, the following amendment to the FY 1987 Fair Market Rent schedule is proposed for the Providence, Rhode Island Market Area:

Authority: Sec. 8(c)(1), U.S. Housing Act of 1937, 42 U.S.C. 1437f; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Schedule A—Fair Market Rents for New Construction and Substantial Rehabilitation

[Special Revision of FY 1987 FMRs]

	Number of Bedrooms				
	0	1	2	3	4
Structural:					
Detached			848	987	1104
Semi-Detached/ Row	515	618	719	797	860
Walkup	463	603	695	715	840
Elevator 2-4 STY	469	621	808		
Elevator 5+ STY	475	628	816		

Dated: January 6, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 89-552 Filed 1-10-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 761

Announcement of Public Hearings and Availability of Draft Supplemental Environmental Impact Statement; on Proposed Rule on Valid Existing Rights and Application Prohibitions of Surface Mining Control and Reclamation Act to Underground Mining

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

ACTION: Notice.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is making available a draft supplement to the 1979 environmental impact statement (EIS) on OSMRE's permanent program regulations. This draft Supplement addresses proposed revisions to the permanent program rules that implement section 522(e) of the Surface Mining Control and Reclamation Act (SMCRA): A standard for valid existing rights (VER) for mining in areas where Congress has otherwise prohibited mining under section 522(e) of SMCRA, and the applicability of the

prohibitions in section 522(e) to subsidence resulting from underground mining. OSMRE is soliciting public comment on this draft Supplement. All substantive comments received within the comment period will be considered in the preparation of the final EIS Supplement. In accordance with the Administrative Procedure Act, any comments on the rule itself should be submitted to the Administrative Record Room (see the Notice of Proposed Rulemaking, 53 FR 52374, December 27, 1988, for full address).

DATES: *Written comments:* Comments on the draft Supplement must be received no later than 3:30 p.m., March 3, 1989. Comments sent to another address or received after the close of the comment period may not be included in the preparation of the Final EIS Supplement.

Hearings: Hearings on the draft Supplement are scheduled on February 16, 1989. All hearings will start at 9:00 a.m. local time.

ADDRESSES: *Written comments:* By mail: Catherine Roy, Office of Surface Mining Reclamation and Enforcement, L-5121 (MS-10), 1951 Constitution Avenue, NW., Washington, DC 20240; or

Hand-deliver: Office of Surface Mining Reclamation and Enforcement, Room 5121, 1100 L Street, NW., Washington, DC, weekdays between 8:00 a.m. and 3:30 p.m.

Hearings: Public hearings are scheduled at the following locations:

Denver, CO—Brooks Towers, Second Floor Conference Room, 1020 15th Street.

Pittsburgh, PA—Parkway Center Inn, 875 Greentree Road.

Washington, DC—First Floor Auditorium, South Interior Building, 1951 Constitution Avenue, NW.

St. Louis, MO—Park Terrace Airport Hilton, 10330 Natural Bridge Road.

FOR FURTHER INFORMATION CONTACT: Single copies of the draft Supplement are available from Catherine Roy, Division of Technical Services (5121-L), OSMRE, 1951 Constitution Avenue, NW., Washington, DC 20240; telephone (202 or FTS) 343-5143.

(Requests for information on the rule itself should be addressed to Dr. Annetta Cheek or Mr. Dermot Winters, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; telephone Dr. Cheek at (202 or FTS) 343-4006 and Mr. Winters at (202 or FTS) 343-1928.)

SUPPLEMENTARY INFORMATION: Pursuant to the National Environmental Policy Act of 1969, as amended, OSMRE has prepared a draft Supplement to the 1979 environmental impact statement on the permanent program regulations. This draft Supplement analyses the potential environmental impacts of a proposed revision to the permanent program rules, 30 CFR Part 761. This proposed rule would affect future surface coal mining operations on lands within National Parks, Wildlife Refuges, Wilderness Areas, Wild and Scenic Rivers, the National System of Trails, and National Recreation Areas. In addition, this proposed rule would affect future surface coal mining operations that would adversely affect places listed on the National Register of Historic Places or any publicly owned park, or operations within a National Forest or within 100 feet of cemeteries and public roads, or within 300 feet of occupied dwellings, public buildings, schools, churches, and public parks. The proposed action and alternatives are as follows:

Alternative A1 (No Action): Modified All Permits/Prohibitions Apply Through State Programs.—Under Alternative A1, coal mining in section 522(e) areas would be regulated as it is now. VER is established by the modified all permits standard. An applicant must demonstrate that he/she had obtained, or made a good-faith effort to obtain, all permits necessary for surface coal mining operations prior to August 3, 1977. Under this alternative, almost no one would qualify for VER, and no surface mining or related impacts are expected on any of the prohibited areas identified in section 522(e). Provisions relating to subsidence in section 522(e) areas vary by State and allow a range of subsidence effects from underground mining in the 522(e) areas.

Alternative B1: Modified All Permits/ Total Prohibition.—Under Alternative B1, VER for surface coal mining operations (including off-site preparation plants) would be established by the modified all permits standard as described under Alternative A1. Because almost no one would qualify for VER under this standard, there would be virtually no surface mining or off-site preparation plants in 522(e) areas. No underground mining or surface impacts of adjacent underground mining would be allowed in section 522(e) areas.

Alternative P1 (Proposed Action): Modified All Permits/No Subsidence.—Under Alternative P1, VER for surface coal mining operations (including off-site preparation plants) would be established by the modified all permits standard as described under A1. Because almost no one would qualify for VER under this standard, there would be virtually no surface mining or off-site preparation plants in 522(e) areas. Underground mining would be allowed within protected zones currently delineated in section 522(e), but surface facilities and any measurable subsidence in the reasonably foreseeable future would be prohibited. The mine operator would be allowed to use whatever means are available to meet this performance standard.

Alternative P2 (Proposed Action): Modified All Permits/No Material Damage.—Alternative P2 is similar to P1, except that under P2, some underground coal mining in 522(e) areas would be allowed, but surface facilities and subsidence that causes material damage to protected lands, features and structures would be prohibited.

Alternative E1: Modified All Permits/ Prohibitions Not Applicable.—Under Alternative E1, VER would be established using the modified all permits standard. Because virtually no one would qualify for VER, there would be no surface coal mining or off-site preparation plants in 522(e) areas. The prohibitions of section 522(e), however, would not apply to subsidence resulting from underground mining. Operations would still be required either to (a) adopt measures to prevent subsidence from causing material damage, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands; or (b) adopt measures that provide for planned subsidence.

Alternative P3 (Proposed Action): Ownership and Authority.—Under Alternative P3, the person claiming VER would need to show the right to extract the coal by the method intended, as determined by the laws of the State in which the property is located. To establish VER for off-site preparation plants, an operator would have to show the right to use the land and have all the permits needed before August 3, 1977.

Most owners of private coal rights in section 522(e) areas would be able to establish VER for underground mining, and the prohibitions of 522(e) would therefore not apply to underground mining. In addition, some operators would be able to establish VER for surface mining within the 522(e) areas. Very few new off-site preparation plants would be established within 522(e) areas. Applicability of the prohibitions of 552(e) to subsidence would be relevant only in those few cases where an operator would not be able to establish VER for the proposed method of mining.

Under this alternative, almost all the non-Federal coal in 522(e) areas could

be underground mined, and some could be surface mined.

Takings Alternative.—Under this alternative, an applicant for VER would have to demonstrate that the person has property rights, as defined by the laws of the State in which the property is located, such that, if the mining permit is denied, the denial would effect a taking of property that would entitle the person to just compensation under the fifth and fourteenth amendments to the United States Constitution. Although the effect of the Takings Alternative for VER cannot be quantitatively analyzed in this supplement, the impacts would be similar to those discussed under A1, B1, P1, and P2, except that less land would be subject to the prohibitions.

The analysis considers the general effects on the human environment that might occur as a result of coal mining under the various alternatives. The analysis is based on assumptions concerning where coal is likely to be produced to meet the Nation's energy needs and the level of that production. These will be determined in part by the availability of coal based on the restrictions imposed under each alternative, that is, the standard used to establish VER and how the subsidence restrictions are applied. This has a direct correlation with the effect of coal mining on the environment.

OSMRE will limit oral testimony at these hearings to 10 minutes. Additional time may be granted at the discretion of the presiding officer based on the number of speakers registered. OSMRE encourage speakers to provide a written text of prepared comments, regardless of length, to help ensure that OSMRE has an accurate record.

Persons who wish to speak should sign the register before the hearing begins. After the last registered speaker has been heard, the hearing officer will consider the request of any other person present who wishes to speak. Any person present may speak; however, only one person will be allowed to represent the viewpoints of any organization.

Dated: January 4, 1989.

Brent Wahlquist,

Assistant Director, Program Policy.

[FR Doc. 89-356 Filed 1-10-89; 8:45 am]

BILLING CODE 4310-05-M

Notices

Federal Register
Vol. 54, No. 7
Wednesday, January 11, 1989

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

Forms Under Review by Officer of Management and Budget

January 6, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118. Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA. If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New Collection

- Farmers Home Administration.

Automatic Payment System Survey
None
One time
Individuals or households; 350 responses; 87 hours; not applicable under 3504(h)
Jack Holston (202) 382-9736

Reinstatement

- Food and Nutrition Service

Summer Food Service Program for Children (SFSPC) Food Service Management
Company-Application for Registration
None
Recordkeeping: Annually
State or local governments; Businesses or other for-profit; Federal agencies or employees; 236 responses; 579 hours; not applicable under 3504(h)
Terry Hallberg (703) 756-3600

- Food and Nutrition Service

Application for Participation (FNS-66); Agreement Between School Food Authority and U.S.D.A. (FNS-67)
FNS-66 and FNS-67
Annually
Non-profit institutions; 1,271 responses; 1,301 hours; not applicable under 3504(h)
Terry Hallberg (703) 756-3600

Donald E. Hulcher,
Acting Departmental Clearance Officer.

[FR Doc. 89-591 Filed 1-10-89; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with §§ 353.53a or 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than January 31, 1989, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in January for the following periods:

	Period
Antidumping Duty Proceeding	
Brazil: Brass sheet and strip (A-351-603)	01/01/88-12/31/88
Canada: Brass sheet and strip (A-122-601)	01/01/88-12/31/88
Canada: Color picture tubes (A-122-605)	06/30/87-12/31/88
France: Anhydrous sodium metasilicate (A-427-098)	01/01/88-12/31/88
Japan: Calcium pantothenate (A-588-049)	01/01/88-12/31/88
Japan: Cell cite transceivers (A-588-021)	01/01/88-12/31/88
Japan: Color picture tubes (A-588-609)	06/30/87-12/31/88
Japan: Expanded metal (A-588-048)	01/01/88-12/31/88
The People's Republic of China: Potassium permanganate (A-570-001)	01/01/88-12/31/88
The Republic of Korea: Brass sheet and strip (A-580-603)	01/01/88-12/31/88
The Republic of Korea: Color picture tubes (A-580-605)	06/30/87-12/31/88
The Republic of Korea: Certain stainless steel cooking ware (A-580-601)	01/01/88-12/31/88
Singapore: Color picture tubes (A-559-601)	06/30/87-12/31/88
South Africa: Low-fuming brazing copper rod and wire (A-791-502)	01/01/88-12/31/88
Spain: Potassium permanganate (A-469-007)	01/01/88-12/31/88
Taiwan: Certain stainless steel cooking ware (A-583-603)	01/01/88-12/31/88
Suspended Investigation	
Canada: Potassium chloride (A-122-701)	08/26/87-12/31/88
Canada: Certain red rasberries (C-122-504)	01/01/88-12/31/88
Colombia: Miniature carnations (C-301-601)	01/01/88-12/31/88

	Period
Colombia: Roses and other cut flowers (C-301-003)	01/01/88-12/31/88
Costa Rica: Fresh cut flowers (C-223-601)	01/01/88-12/31/88
Hungary: Trick trailer axle-and-brake assemblies (A-437-001)	01/01/88-12/31/88
Countervailing Duty Proceeding	
Argentina: Non-rubber footwear (C-357-052)	01/01/88-12/31/88
Brazil: Brass sheet and strip (C-351-604)	01/01/88-12/31/88
Equador: Fresh cut flowers (C-331-601)	01/01/88-12/31/88
Italy: Semi-finished forged undercarriage components (C-475-008)	01/01/88-12/31/88
Mexico: Fabricated automotive glass (C-201-406)	01/01/88-12/31/88
The Republic of Korea: Stainless steel cooking ware (C-580-602)	01/01/88-12/31/88
Spain: Stainless steel wire rod (C-469-004)	01/01/88-12/31/88
Taiwan: Stainless steel cooking ware (C-583-604)	01/01/88-12/31/88

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by January 31, 1989.

If the Department does not receive by January 31, 1989 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Richard W. Moreland,

Acting Deputy Assistant Secretary for Compliance.

Date: January 6, 1988.

[FR Doc. 89-583 Filed 1-10-89; 8:45 am]

BILLING CODE 3510-DS-M

Conversion to Use of the Harmonized Tariff Schedule of Classifications for Antidumping And Countervailing Duty Proceedings

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of conversion to use of the harmonized tariff schedule classifications for antidumping and countervailing duty proceedings.

SUMMARY: On January 1, 1989, the United States fully converted to the international harmonized system of customs nomenclature. As a result, the Harmonized Tariff Schedule classifications will now be applicable for all active antidumping and countervailing duty proceedings, including orders, current investigations and future cases.

On August 21, 1987, the Department of Commerce published a notice inviting public comment on its proposed conversion from the Tariff Schedules of the United States classifications to the Harmonized Tariff Schedule classifications for antidumping and countervailing duty proceedings up to that date. On December 14, 1987, the Department published an amendment to the August 21, 1987, notice.

The Department has reviewed comments received and is now giving notice of Harmonized Tariff Schedule classifications for all antidumping and countervailing duty orders in effect. Classifications for investigations currently in progress are available by consulting the notices of initiation for those investigations.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Craig Johnke or Christopher Beach, or the case analyst, Office of Countervailing Compliance, (telephone: (202) 377-2786) or Barbara Victor, or the case analyst, Office of Antidumping Compliance (telephone: (202) 377-5222), Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230.

Use of Harmonized Tariff Schedule Classification

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988 provides that the United States will convert to the Harmonized Tariff Schedule (HTS) as of January 1, 1989.

On August 21, 1987, the Department of Commerce ("the Department") published in the **Federal Register** a notice inviting public comment on its "Proposed Conversion of Tariff Schedules of the United States Classifications to the Harmonized System of Tariff Schedule Classifications" (52 FR 31657) for all antidumping and countervailing duty orders in effect and investigations in progress up to that date, except for six countervailing duty orders on textile and apparel products. On December 14, 1987, the Department published an amendment to that notice (52 FR 47439) on its proposed conversion of those textile and apparel orders. In addition, the Department began requesting that petitioners provide both the Tariff Schedules of the United States Annotated and the harmonized system classifications in all new petitions filed with the Department.

The Department has reviewed comments received and made adjustments where appropriate. The HTS classifications for the following six countervailing duty orders on textile and apparel products have undergone substantial revision since publication of our December 1987 notice:

Argentina—Woolen Garments (C-357-048)

Argentina—Textiles and Apparel (C-357-404)

Mexico—Textiles Mill Products (C-201-405)

Peru—Textiles and Apparel (C-333-402)

Sri Lanka—Textiles and Apparel (C-542-401)

Thailand—Apparel (C-549-401)

Lists of HTS classifications for all antidumping and countervailing duty orders in effect are now available at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. We have forwarded these lists to the U.S. Customs Service, which will use them as the basis for collecting cash deposits of estimated antidumping and countervailing duties. HTS classifications for investigations currently in progress may be found by consulting the notices of initiation for those investigations. If we receive new information or additional comments on any HTS classifications at any time during the course of a proceeding, we will review those classifications.

A reference copy of the Harmonized Tariff Schedule is available for consultation at the Central Records Unit. Additionally, all U.S. Customs offices have reference copies, and

interested parties may contact the Import Specialist at their local Customs office to consult the schedule.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-584 Filed 1-10-89; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday, 1 February 1989.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Harold Summer, AGED Secretariat, 201 Varick Street, New York, NY 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose 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, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended (5 U.S.C. App. II 10(d) 1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 6, 1989.

[FR Doc. 89-585 Filed 1-10-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Advisory Committee on Military Personnel Testing

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 4:30 p.m. on January 26, 1989, and from 8:30 a.m. to 10:30 a.m. on January 27, 1989. The meeting will be held at the Sheraton Hotel, 2000 NW., 19th Street, Boca Raton, Florida 33431. The purpose of the meeting is to review (1) the equating plan for computerized adaptive testing, (2) adaptability screening measures, and (3) enlistment screening test development and validation. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Anita R. Lancaster, Executive Secretary, Defense Advisory Committee on Military Personnel Testing, Office of the Assistant Secretary of Defense (Force Management and Personnel), Room 2B271, The Pentagon, Washington, DC 20301-4000, telephone (202) 697-9271, no later than January 15, 1989.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 6, 1989.

[FR Doc. 89-589 Filed 1-10-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Advisory Board Meeting

AGENCY: Defense Intelligence Agency Advisory Board.

ACTION: Notice of Closed Meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Board have been scheduled as follows:

DATE: 4-11 February 1989 (9:00 a.m. to 5:00 p.m. each day).

ADDRESS: Germany and London.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Advisory Board, Washington, DC 20340-1328 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting will be devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on tactical intelligence information handling systems.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 6, 1989.

[FR Doc. 89-590 Filed 1-10-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Intent To Prepare Environmental Impact Statement on the Electromagnetic Pulse Simulator Operations at the Harry Diamond Laboratories Woodbridge Research Facility, Woodbridge, VA

AGENCY: Department of the Army, DOD.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) on the Electromagnetic Pulse (EMP) Simulator Operations at the U.S. Army Laboratory Command's Harry Diamond Laboratories Woodbridge Research Facility (HDL-WRF), Woodbridge, VA.

1. The Department of the Army intends to prepare an Environmental Impact Statement (EIS) for the operation of the electromagnetic pulse (EMP) simulators which support the U.S. Army's Nuclear Weapons Survivability Technology Base Program. An Environmental Assessment of the Woodbridge Research Facility Operations at Woodbridge, Virginia, is being completed and will be published for public comment.

The U.S. Army Laboratory Command, Harry Diamond Laboratories, as the Army's lead laboratory for Nuclear Weapon Effects Survivability is responsible for executing a research and development technology base program that provides techniques to assure that U.S. Army systems will survive the effects of the EMP phenomena generated by nuclear weapons on the battlefield. The Harry Diamond Laboratories EMP program involves research and technology development for simulating the EMP environment, providing test and evaluation instrumentation and methods for survivability verification testing, and protecting U.S. Army systems against the effects of the EMP. For these efforts, the Army has built and operates EMP simulators at the Harry Diamond Laboratories HDL-WRF, Woodbridge, VA. EMP simulators consist of an electrical current source which generates a very short (one-millionth of a second) pulse of electrical current. The current pulse flows along the simulator's antenna and produces an

electromagnetic wave which travels away from the antenna.

Alternatives to EMP simulator operations at HDL-WRF which will be considered in the EIS include:

a. Relocate EMP Simulators

b. Cease all WRF EMP Simulator Operations

(1) Use Other Army EMP Simulators

(2) Use Navy or Air Force EMP Simulators

(3) Use Analysis and Computer Modeling Exclusively

(4) Use Laboratory Testing (Scale Model and Direct Injection)

c. Build a New EMP Simulator Facility at Another Location

For this EIS it is anticipated that the Army will use the services of contractors, consultants, and advisors with demonstrated expertise and experience, as well as scientists, engineers, and other government personnel to accumulate the necessary information to make the appropriate analyses.

2. The environmental impact analysis process will be in accord with the National Environmental Policy Act (NEPA) of 1969, Army Regulation 200-2 (32 CFR Part 651), and the regulations of the Council on Environmental Quality, 40 CFR Part 1500. The purpose of this analyses is to determine the extent of environmental impacts and incorporate appropriate mitigation measures.

3. The Army will conduct a scoping process to aid in determining the significant issues related to the proposed action. Public as well as federal, state, and local agency participation and input are desired. To provide an opportunity for public input to the scoping process, interested individuals, governmental agencies, and private organizations are invited to submit information and comments for consideration and possible incorporation into the Army's EIS. Particularly solicited is information that would assist the Army in analyzing the potential environmental consequences of the proposed action. This includes information on other environmental studies, issues and alternatives which the EIS should consider, major impacts, and recommended mitigating measures associated with the proposed action.

4. A public scoping meeting will be held in January 1989. The time and place will be announced in a later issue of the **Federal Register.** This meeting is intended to provide a forum for individuals or agencies to offer information relevant to the environmental impacts or aspects of the proposed action which should be considered by the Army. Those unable to attend the scoping meeting may convey their concerns by writing to the address shown below. Notice will also be mailed to groups and individuals, agencies, and anyone responding to this Notice of Intent desiring to be informed on the details of this upcoming public participation meeting. Questions and comments regarding the scope of the environmental analysis should be submitted to:

U.S. Army Laboratory Command, ATTN: AMSLC-PA, 2800 Powder Mill Road, Adelphi, MD 20783-1145.

Comments and suggestions should be received no later than 15 days following the public scoping meeting to be considered in the Draft EIS (DEIS). For additional information call (301) 394-3590.

5. The DEIS is expected to be available to the public in September 1989. The completed DEIS will be available for review in order that interested persons may comment on the document. Comments received will be considered in preparation of a Final Environmental Impact Statement (FEIS). Persons desiring to be placed on a mailing list to receive additional information regarding the public scoping process and copies of the DEIS and FEIS may contact Ms. Marian Singleton at the address above.

January 6, 1989.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health OASA(I&L).

[FR Doc. 89-567 Filed 1-10-89; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management, Change in Provisions for Characters Participating in International Traffic

AGENCY: Military Traffic Management Command, Department of the Army, DOD 4500.34R and Appendix A, Tender of Service.

ACTION: Request for comments on a proposed regulation and Tender of Service change.

SUMMARY: The Military Traffic Management Command (MTMC) has reviewed the procedure of granting an additional 15 days to carriers participating in international traffic when there is a loss of agent representation at an installation. It is our determination that the additional 15 days is not necessary, and that 30 days notice to procure agent representation is sufficient. Therefore, MTMC is proposing the elimination of the 15 days for Volume 58, effective April 1, 1989. There will still be a requirement on the transportation offices to notify MTMC when a Letter of Intent is returned if the carrier does not procure an agent within the 30-days time frame. This will allow MTMC to continue to monitor the full rate area coverage requirement in the international program.

DATE: Comments submitted on or before February 1, 1989.

ADDRESS: Comments should be addressed to Headquarters, Military Traffic Management Command, ATTN: MT-PPC-I, 5611 Columbia Pike, Falls Church, VA 22041-5050.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Gaige or Mrs. Jean Summers, HQMTMC, ATTN: MT-PPC, 5611 Columbia Pike, Falls Church, VA, 22041-5050, (703) 756-2383.

Kenneth L. Denton,

Department of the Army. Alternate Liaison Officer with the Federal Register.

[FR Doc. 89-678 Filed 1-10-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office for Civil Rights

Civil Rights Office: Public Higher Education Desegregation Plan Implementation by Kentucky; Proposed Report Availability

AGENCY: Department of Education.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the Office for Civil Rights proposed factual report on public higher education desegregation plan implementation by the Commonwealth of Kentucky is available for inspection by the public from 9:00 am to 4:00 pm, Washington, DC time, Monday through Friday, excluding Federal holidays, at the following location; U.S. Department of Education, Switzer Building, 330 C Street, SW., Room 5323, Washington, DC.

This action is taken to obtain public comments on the report before a final decision is made on compliance with Title VI of the Civil Rights Act of 1964. This state's higher education desegregation plan expired in the 1986-87 academic year.

DATES: Comments on the proposed factual report will be accepted March 13, 1989.

FOR FURTHER INFORMATION CONTACT: Contact Sharon H. McCoy at 202-732-1691.

Date: January 5, 1989.

LeGree S. Daniels,

Assistant Secretary for Civil Rights.

[FR Doc. 89-604 Filed 1-10-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88-50-NG]

Poco Petroleum, Inc.; Order Granting Authorization To Import Canadian Natural Gas; Conditional Authorization To Import Canadian Natural Gas

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Order Granting Authorization to Import Natural Gas; and Conditional Authorization to Import Natural Gas

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Poco Petroleum, Inc. (Poco), authority to import up to 15 MMcf per day of Canadian natural gas beginning on the effective date of the order through October 31, 1989, and up to 25 MMcf per day, from November 1, 1990, through March 31, 2005, for Consumers Power Company's system supply. The order also grants conditional authority to Poco to import up to 25 MMcf per day of Canadian natural gas beginning on the date of first delivery in 1990 through October 31, 2004, to provide generation fuel for Midland Cogeneration Venture Limited Partnership's proposed new cogeneration facility at Midland, Michigan.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 23, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 89-600 Filed 1-10-89; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA C&E 89-03; Certification Notice 28]

Filing a Certification of Compliance: Coal Capability of New Electric Powerplants Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311(a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as to base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has filed a self certification:

Name	Date received	Type of facility	Megawatt capacity	Location
P&N Partners, L.P., New York, NY	12-22-88	Combined cycle	9.3	West Carthage, NY.

Amendments to the FUA on May 21, 1987, (Pub. L. 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Issued in Washington, DC, on January 5, 1989.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 89-599 Filed 1-10-89; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200208.

Title: Georgia Ports Authority Terminal Agreement.

Parties: Georgia Ports Authority (GPA), Hapag-Lloyd, A.G., Gulf Container Line BV and Compagnie Generale Maritime, (referred to collectively as Sagumex Consortium).

Synopsis: The Agreement provides that Sagumex Consortium shall have the exclusive use of premises assigned by GPA on Container Berth No. 5 for Sagumex Consortium's steamship operations, storage and handling of containers and parking of an office trailer. The Agreement also provides that Sagumex Consortium will pay GPA for wharfage, crane rental, and slot lease as specified in the Agreement. In addition, Sagumex Consortium will pay GPA for dockage and any other services provided at GPA's published tariff rates effective when such services are performed. The term of the Agreement is for three years. It replaces the parties' previous terminal agreement Agreement No. 224-200047.

Agreement No.: 224/200209.

Title: Port of Portland Terminal Agreement.

Parties: Port of Portland (Portland), Oregon Terminal Company (OTC).

Synopsis: The agreement provides for OTC to operate portions of Portland's Terminal 4 facility, including 61.2 acres, three berths, a backup storage area, a gearlocker building and three warehouses. OTC guarantees Portland a minimum revenue of $870,000 which shall be adjusted the second year and thereafter. Portland will receive a share of the wharfage, dockage and other facility revenue generated at the facility. The initial term of the agreement is for two years. There is an option to renew the agreement for five additional three year terms.

By Order of the Federal Maritime Commission.

Dated: January 6, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-523 Filed 1-10-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

CB&T Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control noting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 2, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *CB&T Bancshares,* Inc., Columbus, Georgia; Barnett Banks, Inc., Jacksonville, Florida; Bank South Corporation, Atlanta, Georgia; Citizens and Southern Georgia Corporation, Atlanta, Georgia; and SunTrust Banks, Inc., Atlanta, Georgia; to acquire Georgia Interchange Network, Inc., Atlanta, Georgia, and thereby engage in data processing transmission and related activities through the operation of an electronic funds transfer network for interchanging ATM, POS, and related transactions among financial institutions pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 5, 1989.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 89-506 Filed 1-10-89; 8:45 am]

BILLING CODE 6210-01-M

Financial Future Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of 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, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 27, 1989.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Financial Future Corporation,* Ceredo, West Virginia; to acquire 100 percent of the voting shares of First Bancorp of Wayne, Inc., Sprague, West Virginia, and thereby indirectly acquire The First National Bank of Kenova, Kenova, West Virginia.

2. *The George Washington Banking Corporation,* Alexandria, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of the The George Washington National Bank, in organization, Alexandria, Virginia, a *de novo* bank.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First of America Bank Corporation,* Kalamazoo, Michigan, and First of America Bancorporation-Illinois, Inc., Libertyville, Illinois; to acquire 100 percent of the voting shares of Whiteside County Bank, Morrison, Illinois.

2. *First Wisconsin Corporation* and F.W.S.B., both of Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Stillwater Holding Company, Stillwater, Minnesota, and thereby indirectly acquire First National Bank of Stillwater, Stillwater, Minnesota, and First State Bank of Hugo, Hugo, Minnesota. Comments on this application must be received by January 24, 1989.

3. *Northern Trust Corporation,* Chicago, Illinois; to acquire 99.7 percent of the voting shares of Concorde Bank, Dallas, National Association, Dallas, Texas.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *MGB Bancshares, Inc.,* Mulberry Grove, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Mulberry Grove, Mulberry Grove, Illinois.

2. *Trenton Bancshares, Inc.,* Trenton, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Commerce, Trenton, Tennessee.

Board of Governors of the Federal Reserve System, January 4, 1989.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 89-507 Filed 1-10-89; 8:45 am]

BILLING CODE 6210-01-M

First Chicago Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 27, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Chicago Corporation*, Chicago, Illinois; to engage *de novo* through its subsidiary, Gary-Wheaton Investment Services, Inc., Wheaton, Illinois, in providing investment and financial advice pursuant to § 225.25(b)(4) of the Board's Regulation Y.

2. *Gary-Wheaton Corporation*, Wheaton, Illinois; to engage *de novo* through its subsidiary, Gary-Wheaton Investment Services, Inc., Wheaton, Illinois, in providing investment and financial advice pursuant to § 225.25(b)(4) of the Board's Regulation Y.

3. *Star Financial Group, Inc.*, Marion, Indiana; to engage *de novo* through its subsidiary, Star Trust Company, Marion, Indiana, in trust company functions pursuant to § 225.25(b)(3) of the Board's Regulation Y.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Fourth Financial Corporation*, Wichita, Kansas; to engage *de novo* in data processing activities related to financial, banking, and economic data pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January, 4, 1989.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 89-508 Filed 1-10-89; 8:45 am]

BILLING CODE 6210-01-M

First Interstate Corp. of Wisconsin; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their view in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 27, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Interstate Corporation of Wisconsin*, Kohler, Wisconsin; to acquire First Interstate Management Services of Wisconsin, Sheboygan, Wisconsin, and thereby engage in management consulting services pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 4, 1989.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 89-509 Filed 1-10-89; 8:45 am]

BILLING CODE 6210-01-M

First Union Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage de novo, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the

proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 27, 1989.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Union Corporation*, Charlotte, North Carolina, and First Wachovia Corporation, Winston-Salem, North Carolina; to engage de novo through their subsidiary, Georgia Interchange Network, Inc., Atlanta, Georgia, in data processing trasmission and related activities through the operation of an electronic funds transfer network for interchanging ATM, POS, and related transactions among financial institutions pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Hasten Bancorp*, Indianapolis, Indiana; to engage de novo through its subsidiary, Hasten Financial Services, Indianapolis, Indiana, securities brokerage activities pursuant to § 225.25(b)(15); and providing investment advice pursuant to § 225.25(b)(4) of the Board's Regulation Y.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Community Bancorp*, Lacey, Washington; to engage de novo in providing courier services pursuant to § 225.25(b)(10); real estate appraising pursuant to § 225.25(b)(13); performing trust company functions pursuant to § 225.25(b)(3); SBA Financing pursuant to § 225.25(b)(1); and insurance sales pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted throughout Washington and Oregon.

Board of Governors of the Federal Reserve System, January 5, 1989.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 89-510 Filed 1-10-89; 8:45 am]

BILLING CODE 6210-01-M

JTNB Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of 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, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 2, 1989.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *JTNB Bancorp, Inc.*, Jim Thorpe, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Jim Thorpe National Bank, Jim Thorpe, Pennsylvania.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mid Am Inc.*, Bowling Green, Ohio; to acquire 100 percent of the voting shares of FBC Bancshares, Inc., Lakeview, Ohio, and thereby indirectly acquire Farmers Banking Company, National Association, Lakeview, Ohio. Comments on this application must be received by January 27, 1989.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Baldwin Bancshares, Inc.*, Milledgeville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Baldwin County, Milledgeville, Georgia, a de novo bank.

2. *CB&T Bancshares, Inc.*, Columbus, Georgia; to acquire 100 percent of the voting shares of Farmers and Merchants Bank of Russell County, Phenix City, Alabama.

3. *1st United Bancorp*, Boca Raton, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of 1st United Bank, Boca Raton, Florida.

4. *Sweet Water State Bancshares, Inc.*, Sweet Water, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Sweet Water State Bank, Sweet Water, Alabama.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Union Planters Corporation*, Memphis, Tennessee; to acquire at least 39.34 percent of the voting shares of Fidelity Bancorp, Inc. of West Memphis, West Memphis, Arkansas, and thereby indirectly acquire Fidelity National Bank of West Memphis, West Memphis, Arkansas.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Commerce Bancshares, Inc.*, Lincoln, Nebraska; Stuart Family Partnership, Lincoln, Nebraska; Catherine Stuart Schmoker Family Partnership, Lincoln, Nebraska; James Stuart, Jr. Family Partnership, Lincoln, Nebraska; and Scott Stuart Family Partnership, Lincoln, Nebraska; to acquire 15 percent of the voting shares of Lincoln Bank South, Lincoln, Nebraska. Comments on this application must be received by January 25, 1989.

2. *First Tuttle Bancorp, Inc.*, Tuttle, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Tuttle, Tuttle, Oklahoma. Comments on this application must be received by January 25, 1989.

Board of Governors of the Federal Reserve System, January 5, 1989.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 89-511 Filed 1-10-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Randall Porter, et al.

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. Once the notices have been accepted for processing, they will also 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 January 25, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Randall Porter,* Alpharetta, Georgia; to acquire an additional 1.2 percent of the voting shares of First Colony Bancshares, Inc., Alpharetta, Georgia, and thereby indirectly acquire First Colony Bank, Alpharetta, Georgia.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Joseph Polack,* M. Victor Monson, and L.T. Womack; to acquire 26.6 percent of the voting shares of Corn Belt Bancorporation, Lincoln, Nebraska, and thereby indirectly acquire Corn Belt State Bank, Correctionville, Iowa, and Union National Bank, Massena, Iowa.

2. *Joseph Polack,* to acquire 5.81 percent of the voting shares of Thurman State Corporation, Lincoln, Nebraska, and thereby indirectly acquire American National Bank, Bedford, Iowa, and thereby indirectly acquire Union National Bank of Iowa, Sidney, Iowa.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Helene M. McCann,* Shawnee Mission, Kansas, to acquire an additional 2.48 percent, and Glenn McCann and Helene McCann, Shawnee Mission, Kansas, to acquire an additional 1.54 percent of the voting shares of Fidelity Banc Corporation, Dodge City, Kansas, and thereby indirectly acquire Fidelity State Bank and Trust Company, Dodge City, Kansas.

D. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Robert B. Sharples,* George West, Texas, and Larry J. Jurica, George West, Texas, to each acquire 6.35 percent of the voting shares of Luling Bancshares, Inc., Luling, Texas, and thereby indirectly acquire The First National Bank in Luling, Luling, Texas.

Board of Governors of the Federal Reserve System, January 5, 1989.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 89-512 Filed 1-10-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; J. Bar M. Shonsey, Inc., et al.

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. Once the notices have been accepted for processing, they will also 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 January 24, 1989.

A. **Federal Reserve Bank of Minneapolis.** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *J. Bar M. Shonsey, Inc.,* Omaha, Nebraska; to acquire an additional 0.95 percent of the voting shares of Hebron Bancshares, Inc., Hebron, North Dakota, and thereby indirectly acquire Security Bank of Hebron, Hebron, North Dakota.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Sammy P. Pierce,* Bellville, Texas, to acquire 7.72 percent; and Pierce Sale Company, Trustee of Profit Sharing Plan, Bellville, Texas, to acquire 4.86 percent of the voting shares of Community Bancorporation, Inc., Bellville, Texas, and thereby indirectly acquire The First National Bank of Bellville, Bellville, Texas, and The Waller Bank, N.A., Waller, Texas.

2. *Daniel P. Bolin,* Wichita Falls, Texas, to acquire 18.48 percent; Patrick S. Bolin, Dallas, Texas, to acquire 20.35 percent; and Warren T. Ayres, Wichita Falls, Texas, to acquire 6.78 percent; of Fidelity Resources Company, Dallas, Texas, and thereby indirectly acquire Fidelity National Bank of Dallas, Dallas, Texas.

3. *Elwood Freeman,* Lamesa, Texas; to acquire 26.48 percent of the voting shares of Lamesa National Corporation, Lamesa, Texas, and thereby indirectly acquire The Lamesa National Bank, Lamesa, Texas.

4. *Klaus Peter Ulrich,* Kingwood, Texas, to acquire 100 percent of the Class A voting common stock; Heinz Klinckwort, Calz Del Las Brujas, Mexico, to acquire 21.1 percent of Class B non-voting common stock; Inge. Ramon E. Beteta De Cou, Guadalajara, Mexico, to acquire 14.1 percent of the Class B non-voting common stock; and Luis Mendez Jiminez, Prolongacion, Mexico, to acquire 61.7 percent of Class B non-voting common stock of Sun Belt Bancshares Corporation, Conroe, Texas, and thereby indirectly acquire National Bank of Conroe, Conroe, Texas.

Board of Governors of the Federal Reserve System, January 4, 1989.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 89-513 Filed 1-10-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Privacy Act of 1974; System of record

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of proposed new routine uses for an existing system of records.

SUMMARY: The Health Care Financing Administration (HCFA) is amending the system notice for the Health Insurance Master Record HHS/HCFA/BPO No. 09-70-0502, to add two new routine uses.

EFFECTIVE DATES: The proposed new routine uses shall take effect without further notice February 10, 1989, unless comments received on or before that date would warrant changes.

ADDRESS: Please address comments to: Richard A. DeMeo, HCFA Privacy Act Officer, Health Care Financing Administration, G-M-1 East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. We will make comments received available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Marla Kilbourne, Office of Prepaid Health Care, 320 Meadows East Building, 6325 Security Boulevard, Baltimore Maryland 21207, 301-966-7622.

SUPPLEMENTARY INFORMATION: The Health Insurance Master Record, System No. 09-70-0502, contains records on enrollment, entitlement, bill processing, and certain other information relating to Medicare beneficiaries. The system notice for this system was most recently published at 53 FR 52792; December 29, 1988. As described below, we are proposing to establish two new routine uses under the system notice to permit disclosure to group health plans, directly or through a contractor, of a limited amount of information from the Health Insurance Master Record. The term "group health plans" includes health maintenance organizations (HMOs) and competitive medical plans (CMPs) which have entered into Medicare contracts with HCFA and health care prepayment plans (HCPPs) which have been approved by HCFA.

The proposed disclosure of limited information from the Health Insurance Master Record to group health plans with Medicare contracts or approvals is necessary to enable a plan to determine accurately, at the time an application for enrollment is submitted, the eligibility of a Medicare beneficiary to enroll in the plan. Thus, disclosure of data in the file would enable a group health plan to identify on a timely basis whether the beneficiary applying to enroll (1) is entitled to Medicare Part A and/or Part B, (2) has been medically determined to have end stage renal disease (ESRD), (3) has an active hospice care election, or (4) is already enrolled in another Medicare group health plan. Entitlement to Part A and/or Part B is relevant to determine the extent of Medicare coverage, if any, of a group health plan applicant. ESRD status or hospice election status are relevant since, except under certain circumstances, individuals having such status are not eligible to enroll in an HMO or CMP. Whether a beneficiary is already enrolled in a Medicare group health plan is relevant since it helps to assure that the beneficiary is not disenrolled from his/her current plan and enrolled in a new one as a consequence of inadvertence or misunderstanding.

A further purpose in disclosing certain data from the file would be to enable group health plans to verify at the time of an application for enrollment that the name and HI claim number provided by the group health plan applicant correspond with the name and number in HCFA's records. This helps to avoid the processing and other complications that result from an enrollment based on erroneous eligibility information. Since the purposes of disclosure under the proposed routine uses relate to beneficiary eligibility and bill and payment record processing, they are compatible with the purpose of collecting the information maintained in the Health Insurance Master Record.

In order to protect the privacy of Medicare beneficiaries, we are proposing to limit the data released to gropu health plans to the minimum necessary to determine the enrollment eligibility of group health plan applicants. Thus, only the following data elements will be disclosed under the proposed routine uses: Health Insurance Claim number, name, sex, date of birth, Part A and/or Part B entitlement data, State and county code, status code (alive/deceased), Medicaid/ESRD/hospice code (if applicable), and current HMO enrollment period (if applicable). As a further precaution, we are providing that group health plans would have access only to one record at a time and only through a CRT terminal. A password would have to be entered to gain access to the file. Both the beneficiary's name and the Health Insurance Claim number would have to be entered to access individual records within the file.

We are proposing that when a contractor is used to refine or otherwise process data and make the limited disclosure just described, the contractor would be required to safeguard the confidentiality of the data maintained in its information system and prevent unauthorized use or disclosure. The contractor would be required, for instance, to provide an adequate level of security for the data by maintaining it under appropriate technical, personnel, administrative, and telecommunications safeguards. The contractor could use the data only for purposes of fulfilling its contract with HCFA and not for any other purpose. We are proposing that the following routine uses be added to the current system notice for the Health Insurance Master Record, System No. 09-70-0502:

(14) To a group health plan (i.e., a health maintenance organization (HMO) or a competitive medical plan (CMP) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP)), directly or through a contractor on a case-by-case basis for the purpose of determining the eligibility of a Medicare beneficiary to enroll in the group health plan. Group health plans will have access only to one record at a time and only through a CRT terminal. A password must be entered to gain access to the file. Both the beneficiary name and the Health Insurance Claim number must be entered to access individual records within the file. The information disclosed will be the minimum necessary to determine eligibility for enrollment.

(15) To a contractor when HCFA contracts with a private firm for the purpose of refining or otherwise processing data and disclosing such data to group health plans consistent with routine use no. 14. The contractor will be required to safeguard the confidentiality of the data and prevent unauthorized use or disclosure.

The new routine uses are consistent with Privacy Act, 5 U.S.C. 552a(a)(7), since, as previously noted, they are compatible with the purpose for which the information is collected. Because the addition of these new routine uses will not change the purposes for which the information in the system will be used, or otherwise alter the system, we are not required to prepare a report of altered system of records under 5 U.S.C. 552a(o).

We are publishing the system notice below in its entirety for the convenience of the reader.

Date: January 6, 1989.

William L. Roper,

Administrator, Health Care Financing Administration.

09-70-0502

SYSTEM NAME:

Health Insurance Master Record, HHS/HCFA/BPO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration Bureau of Data Management and Strategy, 6325 Security Blvd., Baltimore, Md. 21207.

Federal Records Centers

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Indidividuals age 65 or over who have been, or currently are, entitled to health insurance (Medicare) benefits under title XVIII of the Social Security Act; individuals under age 65 who have been, or currently are, entitled to such benefits on the basis of having been entitled for not less than 24 months to disability benefits under title II of the Act or under the Railroad Retirement Act and individuals who have been, or currently

are, entitled to such benefits because they have end-stage renal disease; or individuals whose enrollment in an employer group health benefits plan covers the beneficiary.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information on enrollment, entitlement, utilization, query and reply activity, health insurance bill and payment record processing, workers' compensation entitlement information, and entitlement information from the Veterans Administration (VA), Health Insurance Master Record maintenance, and Medicare secondary payer records containing other party liability insurance information necessary for appropriate Medicare claim payment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1814, 1833 and 1862(b) of title XVIII of the Social Security Act (42 U.S.C. 1396f, 1395l and 1395y(b)).

PURPOSE(S):

To maintain information on Medicare beneficiary eligibility and costs in order to reply to inquires from contractors and intermediaries and to maintain utilization data for health insurance bill and payment record processing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to: (1) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Act relating to railroad employment.

(2) State Welfare Department pursuant to agreements with the Department of Health an Human Services for determining Medicaid and Medicare eligibility for quality control studies, for determining eligibility of recipients of assistance under title IV, XVIII, and XIX of the Social Security Act, and for the complete administration of the Medicaid program.

(3) State audit agencies for auditing State Medicaid eligibility considerations.

(4) Providers and suppliers of services directly or dealing through fiscal intermediaries or carriers for administration of title XVIII.

(5) A congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(6) An individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

a. Determine that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the purpose of which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished:

c. Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual.

(b) For use in another research project, under these same conditions, and with written authorization of HCFA.

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law:

d. Secures a written statement attesting to the information recipient(s) understanding of and willingness to abide by these provisions.

(7) The Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(8) To a contractor when the Department contracts with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system. Relevant records will be disclosured to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

(9) State welfare agencies that require access to the two files which are extracted from the Health Insurance Master Record. These files are the Carrier Alphabetical State File (CASF) and Beneficiary State File (BEST). Most State agencies require access to the CASF and BEST files for improved administration of the Medicaid program. Routine uses of the CASF and BEST files for State agencies are: (a) Obtaining a beneficiary's correct health insurance claim number and (b) screening of prepayment and post-payment Medicaid claims.

(10) Third-party contacts (without the consent of the individual to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capability or manage his or her affairs or to his or her eligibility for an entitlement to benefits under the Medicare program when:

(a) The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exist: Individual is incapable or of questionable mental capability, cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual): or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's eligibility to benefits under the Medicare program; the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity,

or for quality appraisal, or evaluation and measurement of system activities.

(11) Release information, without the beneficiary's authorization, to insurance companies, self-insurers, Health Maintenance Organizations, multiple employer trusts and other groups providing protection against medical expenses of their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive this information the entity must agree to the following conditions:

a. To certify that the individual about whom the information is being provided is one if its insureds;

b. To utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. To safeguard the confidentiality of the data and to prevent unauthorized access to it.

(12) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors, incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

(13) To an agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the State, if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained;

b. Establishes that the data are exempt from disclosure under the State and/or local Freedom of Information Act;

c. Determines that the purpose for which the disclosure is to be made:

(1) Cannot reasonably be accomplished unless the data are provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individuals that additional exposure of the record might bring, and;

(3) There is reasonable probability that the objective for the use would be accomplished; and

d. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request, unless the recipient presents an adequate justification for retaining such information;

(3) Make no further use or disclosure of the record except;

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another project under the same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the project, if information that would enable project subject to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law; and

(4) Secure a written statement attesting to the recipient's understanding of an willingness to abide by these provisions. The recipient must agree to the following:

(1) Not to use the data for purposes that are not related to the evaluation of cost, quality, and effectiveness of care;

(2) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level when no data cells have ten or fewer beneficiaries); and

(3) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication.

(14) To a group health plan (i.e., health maintenance organization (HMO), or a competitive medical plans (CMP) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP), directly or through a contractor on a case-by-case basis for the purpose of determining the eligibility of a Medicare beneficiary to enroll in the group health plan. Group health plans will have access only to one record at a time and only through a CRT terminal. A password must be entered to gain access to the file. Both the beneficiary name and the Health Insurance Claim number must be entered to access individual records within the file. The information disclosed will be the minimum necessary to determine eligibility for enrollment.

(15) To a contractor when HCFA contracts with a private firm for the purpose of refining or otherwise processing data and disclosing such data to group health plans consistent with routine use No. 14. The contractor will be required to safeguard the confidentiality of the data and prevent unauthorized use or disclosure.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained on paper, listings, microfilm, magnetic tape disc and punchcards.

RETRIEVABILITY:

System is sequence by health insurance claim number, and is used to carry out the tasks of enrollment, query/reply activity, and health insurance bill and payment record processings. Copies of selected parts of the records will be used by the Office of Statistics and Data Management.

SAFEGUARDS:

Unauthorized personnel are denied access to the records areas. Disclosure is limited to routine use. For computerized records electronically transmitted between Central Office and field office locations (including Medicare contractors) systems securities are established in accordance with DHHS ADP Systems Manual, Part 6, "ADP Systems Security." Safeguards include a lock/unlock passwords system, exclusive use of leased telephone lines, a terminal oriented transaction matrix, and and audit trail.

RETENTION AND DISPOSAL:

Records are generally added to the file several months prior to entitlement. After the death of a beneficiary, his or her records may be placed in an inactive file following a period of no billing or query activity. The current 5 years of Part B and current 5 spells of Part A utilization data are maintained. All noncurrent data is microfilmed prior to elimination from the system.

SYSTEM MANAGER(S) AND ADDRESS:

Health Care Financing Administration, Bureau of Program Operations, Director, Division of Entitlement Requirements 6325 Security Boulevard, Baltimore, Md. 21207.

NOTIFICATION PROCEDURE:

Inquiries and requests for system records should be addressed to the most conventional social security office, the appropriate carrier or intermediary, the HCFA Regional Office, or the system manager named above. The individual should furnish his or her health

insurance claim number and name as shown on Medicare records.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. [These access procedures are in accordance with Department Regulations (45 CFR 5b.5(a)(2).])

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department Regulations (45 CFR 5b.7)).

RECORD SOURCE CATEGORIES:

The data contained in these records are furnished by the individual, or in the case of some Medicare secondary payer situations, through third party contacts. There are cases, however, in which the identifying information is provided to the physician by the individual; the physician then adds the medical information and submits the bill to the carrier for payment. Updating information is also obtained from the Master Beneficiary Record.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 89-628 Filed 1-10-89; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

Division of Research Resources, National Advisory Research Resources Council; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), Division of Research Resources (DRR), on February 2-3, 1989, at the National Institutes of Health, Conference Room 10, Building 31C, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on February 2, from 9 a.m. until recess and from 8:30 a.m. until approximately 10:45 a.m. on February 3 during which time there will be discussions on administrative matters such as previous meeting minutes; the report of the Acting Director, DRR; and review of budget and legislative updates. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on February 3 from approximately 10:45 a.m. until adjournment for the review, discussion and evaluation of individual grant applications.

The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Michael Fluharty, Public Affairs Specialist, DRR, Building 31, Room 5B10, National Institutes of Health, Bethesda, Maryland 20892, 301/496-5545, will provide a summary of the meeting and a roster of the Council members upon request. Dr. James F. O'Donnell, Deputy Director, DRR, Building 31, Room 5B03, National Institutes of Health, Bethesda, Maryland 20892, 301/496-6023, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, Laboratory Animal Sciences and Primate Research; 13.333, Clinical Research; 13.337, Biomedical Research Support; 13.371, Biomedical Research Technology; 13.375, Minority Biomedical Research Support; 13.389 Research Centers in Minority Institutions, National Institutes of Health).

Dated: December 30, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-543 Filed 1-10-89; 8:45 am]

BILLING CODE 4140-01-M

National Eye Institute, National Advisory Eye Council; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Eye Council, National Eye Institute, January 26, 1989, Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public from 8:30 a.m. until approximately 11:00 a.m. on Thursday, January 26. Following opening remarks by the Director, National Eye Institute, there will be presentations by the staff of the Institute concerning Institute programs and various research assistance mechanisms. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from approximately 11:00 a.m. until closing on January 26 for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

There will be no meeting of the Vision Research Program Planning Subcommittee in January 1989.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, Building 31, Room 6A51, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-9110, will provide summaries of meetings, rosters of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs, Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Anterior Segment Diseases Research; and 13.871, Strabismus, Amblyopia and Visual Processing; National Institutes of Health.)

Dated: December 30, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-545 Filed 1-10-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases, National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee, Allergy and Immunology Subcommittee, Microbiology and Infectious Diseases Subcommittee; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on January 26-27, 1989 at the National Institutes of Health, Building 31C, Conference Room 6, Bethesda, Maryland 20892.

The meeting will be open to the public on January 26 from approximately 8:30 a.m. to 8:45 a.m. for opening remarks of the Institute Director and from 10 a.m. to recess for meetings of the Council subcommittees. On January 27 the meeting will be open to the public from approximately 8:30 a.m. until 2 p.m. for

discussion of procedural matters, Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program discussion will include a report on the revision and institution of procedures for review of large grant mechanisms; a discussion of transplantation immunology and a report from each of the Council subcommittees.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately three hours for review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 8:45 a.m. until approximately 10 a.m. on January 26, in conference rooms 5, 7 and 9 respectively. The meeting of the full Council will be closed from approximately 2 p.m. until adjournment on January 27 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. John W. Diggs, Director, Extramural Activities Program, NIAID, NIH, Westwood Building, Room 703, telephone (301-496-7291), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Mocrobiology and Infectious Diseases Research, National Institutes of Health.)

Dated: December 30, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-544 Filed 1-10-89; 8:45am]

BILLING CODE 4140-01-M

National Institute of Arthritis and Musculoskeletal and Skin Diseases National Arthritis and Musculoskeletal and Skin Diseases Advisory Council; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council to provide advince to the National Institute of Arthritis and Muscoloskeletal and Skin Diseases on February 16, and 17, 1989, Conference Room 6, Building 31, National Institutes, of Health, Bethesda, Maryland. The meeting will be open to the public February 16 from 8:30 a.m. to 12 noon to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

The meeting of the Advisory Council will be closed to the public on February 16 from 1 p.m. to adjournment and again on February 17 from 8:30 a.m. to adjournment at approximately 12 noon in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council meeting may be obtained from Dr. Seven J. Hausman, Executive Secretary, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council, NIAMS, Westwood Building, Room 403, Bethesda, Maryland 20892, (301) 496-7495.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIAMS, Building 31, Room 4C32, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-0803.

(Catalog of Federal Domestic Assistance Program No. 13.846, Arthritis, Bone and Skin Diseases, National Institutes of Health)

Dated: December 30, 1988.

Betty J. Beveridge,

NIH, Committee Management Officer.

[FR Doc. 89-546 Filed 1-10-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Child Health and Human Development; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the review committees of the National Institute of Child Health and Human Development for March 1989.

These meetings will be open to the public to discuss items relative to committee activities including announcements by the Director, NICHD, and executive secretaries, for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Hall, Committee Management Officer, NICHD, Executive Plaza North Building, Room 520, National Institutes of Health, Bethesda, Maryland, Area Code 301-496-1485, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meetings may be obtained from the Executive Secretary indicated.

Name of Committee: Population Research Committee.

Executive Secretary: Dr. A.T. Gregoire, Room 520, Executive Plaza North Building, Telephone: 301, 496-1696.

Date of Meeting: March 2-3, 1989.

Place of Meeting: Executive Plaza North, Conference Room H, 6130 Executive Blvd., Bethesda, Maryland.

Open: March 2, 1989, 9:00 a.m.-10:00 a.m.

Closed: March 2, 1989, 10:00 a.m.-5:00 p.m., March 3, 1989, 9:00 a.m.-adjournment.

Name of Committee: Maternal and Child Health Research Committee.

Executive Secretary: Dr. Scott Andres, Room 520, Executive Plaza North Building, Telephone: 301, 496-1485.

Date of Meeting: March 7-8, 1989.

Place of Meeting: Executive Plaza North, Conference Room H, 6130 Executive Blvd., Bethesda, Maryland.

Open: March 7, 1989, 9:00 a.m.-10:00 a.m.

Closed: March 7, 1989, 10:00 a.m.-5:00 p.m., March 8, 1989, 9:00 a.m.-adjournment.

Name of Committee: Mental Retardation Research Committee.

Executive Secretary: Dr. Susan Streufert, Room 520, Executive Plaza North Building, Telephone: 301, 496-1696.

Date of Meeting: March 9-10, 1989.

Place of Meeting: Executive Plaza North, Conference Room G, 6130 Executive Blvd., Bethesda, Maryland.

Open: March 9, 1989, 9:00 a.m.-10:00 a.m.

Closed: March 9, 1989, 10:00 a.m.-5:00 p.m., March 10, 1989, 9:00 a.m.-adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.864, Population Research and No. 13.865, Research for Mothers and Children, National Institutes of Health.)

Dated: December 30, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-547 Filed 1-10-89; 8:45]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Policy Development and Research; Supplemental Assistance for Facilities To Assist the Homeless; Amendments to Guidelines

[Docket No. N-89-1904; FR-2585]

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of amendments to program guidelines.

SUMMARY: This notice announces changes for immediate effect to HUD's guidelines for the operation of the program of Supplemental Assistance for Facilities to Assist the Homeless (SAFAH) as a result of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988) (1988 Amendments Act). This program was authorized by Title IV, Subtitle D, of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987) (McKinney Act) to provide: (1) Assistance to cover the costs in excess of assistance provided under the Emergency Shelter Grants and the Supportive Housing Demonstration programs that are required to meet the special needs of certain homeless populations or to facilitate the transfer and use of public buildings to assist the homeless; or (2) comprehensive assistance for particularly innovative programs for, or alternative methods of, meeting the immediate and long-term needs of the homeless. Guidelines for the operation of SAFAH were published by HUD on October 19, 1987 (52 FR 38880). This notice also announces proposed changes to the guidelines to be incorporated in a final rule after public comment. The notice solicits public comment on the October 19, 1987 guidelines, the 1988 Amendments Act changes announced in this notice, and the proposed changes to the guidelines in order to prepare a final rule for publication. No funds are available for obligation for SAFAH for FY 1989 as of the date of this notice.

EFFECTIVE DATE: January 11, 1989.

Comments due: March 27, 1989.

ADDRESS: Interested persons are invited to submit comments on the October 19, 1987 guidelines (52 FR 38880) and the changes to the guidelines announced in this notice to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address. Copies of the October 19, 1987 SAFAH guidelines may be obtained from the above address on request.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Division of Policy Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 8112, Washington, DC 20410, telephone (202) 755-5537. Hearing or speech impaired individuals may call HUD's TDD number (202) 426-0015. These telephone numbers are not toll-free.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements for the Supplemental Assistance for Facilities to Assist the Homeless program were submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980, and were approved on December 30, 1988 and assigned OMB control number 2528-0361. The public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the heading *Other Matters.* Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Background and Procedural Matters

The McKinney Act authorized the SAFAH program to provide two categories of assistance: (1) Assistance to cover the costs in excess of assistance provided under the Emergency Shelter Grants and the Supportive Housing Demonstration programs that are required to meet the special needs of certain homeless populations or to facilitate the transfer and use of public buildings to assist the homeless; or (2) comprehensive assistance for particularly innovative programs for, or alternative methods of, meeting the immediate and long-term needs of the homeless. Section 433 of the McKinney Act required HUD to establish by **Federal Register** notice the guidelines for governing SAFAH. HUD published the guidelines on October 19, 1987 (52 FR 38880) (the SAFAH guidelines).

Section 485 of the 1988 Amendments Act requires that HUD publish, within 60 days of its enactment, a notice for immediate effect describing the changes to the SAFAH guidelines made by the Act. In addition to the changes for immediate effect necessitated by the 1988 Amendments Act, HUD is proposing in this notice two changes to the guidelines, which will not be effective until public comment has been received and considered.

The 1988 Amendments Act also requires HUD to issue a final rule not later than 12 months after enactment based on the guidelines and the changes to the guidelines established in this notice. HUD invites the public to comment on the guidelines, the changes for immediate effect, and the proposed changes announced in this notice for consideration in the final rulemaking. Interested persons should refer to the October 19, 1987 guidelines (52 FR 38880) in order to understand the changes described in this notice within the context of those guidelines.

No funds are available for obligation for SAFAH for FY 1989 as of the date of this notice. When funds become available in the future, HUD will publish a Notice of Funds Availability and will invite eligible applicants to apply for assistance under the program.

II. Comprehensive Homeless Assistance Plan

SAFAH assistance may not be provided to or within the jurisdiction of a State or an ESG formula city or county (defined in section A of the SAFAH guidelines), unless the jurisdiction (or jurisdictions, where necessary) has a HUD-approved Comprehensive Homeless Assistance Plan (CHAP). On December 28, 1988, HUD published a notice announcing the current requirements for HUD approval of a CHAP as a result of the 1988 Amendments Act (53 FR 52600). Readers should familiarize themselves with the CHAP requirements.

III. 1988 Amendments Act Changes to SAFAH Guidelines

1. *Assistance provided.* Section 461(1) of the 1988 Amendments Act is a technical amendment to clarify that assistance is available to provide supportive services to the homeless in the category of assistance in excess of ESG and SHD program funding (see section B.1.(ii) of the SAFAH guidelines). The term "supportive services" is defined in section A of the SAFAH guidelines.

In the category of comprehensive assistance (section B.1.(i) of the SAFAH guidelines), section 461(2) of the 1988 Amendments Act authorizes assistance for the operation of facilities to assist the homeless, in addition to assistance for the purchase, lease, rehabilitation, or conversion of the facilities. Operating expenses are those that a recipient incurs for administration, maintenance, minor or routine repair, security, utilities, fuel, furnishings, equipment, and rental of the housing. The term does not include expenses that a recipient incurs for debt service in connection with a loan used to finance acquisition or rehabilitation costs under the program.

2. *Site control.* Section 463 of the 1988 Amendments Act provides that an application for assistance must furnish reasonable assurances that the applicant will own or have control of a site for the proposed project not later than six months after notification of an award for assistance. Under the SAFAH guidelines (sections E.2.(i)(b)(3)(*c*) and E.3.(i)(b)(4)(*c*)), applicants were required to demonstrate control of a site at the time of the application for assistance. This amendment will permit applications to be made for projects that are not able to gain control of a site until they have been notified of an award for assistance. "Reasonable assurances" must be satisfied by identification of a suitable site (a suitable site is one that meets the threshold requirements applicable to sites in sections E.2.(i) and E.3.(i) of the guidelines) and:

(a) Certification that the applicant is engaged in negotiations or in other efforts for the purpose of gaining control of the identified site; or

(b) Other evidence satisfactory to HUD showing that the applicant will gain control of the identified site.

Section 463 also provides that an applicant may obtain ownership or control of a suitable site different from the one specified in its application. Retention of an assistance award is subject to the new site's meeting all requirements for suitable sites. If the acquisition or rehabilitation costs for the substitute site are more than the amount of the advance or grant, the recipient must furnish all additional costs. If the recipient is unable to demonstrate to HUD that it has the ability to furnish the difference in costs, HUD may recapture the obligated funds and reallocate the funds to other projects.

If a recipient does not have control of the site within one year after notification of an award for assistance, section 463 requires HUD to recapture the obligated funds and reallocate the funds to other projects.

This provision applies to all future applicants for SAFAH assistance, as well as to any recipients that were notified of awards on or after November 1, 1987 and whose funds were later deobligated by HUD upon learning the recipient no longer had ownership or control of the site specified in its application or that the recipient wanted to change to a site different from the site specified in its application.

3. *Environmental review.* Section 443 provides that the provisions of, and regulators and procedures applicable under, section 104(g) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(g)) shall apply to assistance and projects under Title IV of the McKinney Act. Section 104(g) provides that, in lieu of the environmental protection procedures otherwise applicable, the Secretary may provide for the release of funds for particular projects to grantees who assume all the responsibilities for environmental review, decisionmaking, and action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) (NEPA) and the other provisions of law that would apply to the Secretary were the Secretary to undertake such projects as Federal projects. HUD regulations implementing section 104(g) are found in 24 CFR Part 58, and the Secretary has specified the other provisions of law under which environmental responsibilities are to be assumed by grantees in 24 CFR 58.5. (These authorities include the floodplain restrictions discussed in III.4.)

As applied to SAFAH, the Department views section 443 as authorizing the Secretary to require States, metropolitan cities, urban counties, tribes, or other governmental entities with general purpose governmental powers to assume the responsibility for assessing the environmetal effects of each application for assistance in accordance with the procedural provisions of NEPA, the related environmental laws and authorities, and HUD's implementing regulations in 24 CFR Part 58. In accordance with the new statutory authorization, HUD will, in connection with future SAFAH grants, provide for assumption of these responsibilities by jurisdictions with general governmental powers that are deemed to have the legal capacity to assume the responsibilities. This policy will *not* be applied to advances or grants made to governmental entities with *special* or *limited purpose* powers or to *provide nonprofit organizations.* HUD will continue to perform the environmental review for these entities in accordance with 24 CFR Part 50, to the extent required. Relevant reviews completed for purposes of another McKinney Act program or other HUD programs may suffice for purposes of SAFAH, where permitted under Part 58.

An applicant with general purpose governmental powers that believes that it does not have the legal capacity to carry out the environmental responsibilities required by 25 CFR Part 58 should contact the appropriate HUD Field Office for further instructions. Determinations of legal capacity will be made on a case-by-case basis.

With respect to applications for which the applicant will be responsible for performing the environmental review under section 104(g) and 24 CFR Part 58, the environmental review process will be independent of the threshold requirements and selection process, and the applicant may complete the environmental review after those processes and after selection for funding. Therefore, the provisions of sections E.2(i)(b)(3)(*c*) and E.3(i)(b)(4)(*c*) of the SAFAH guidelines that concern historic preservation requirements, as well as sections E.2(iii) and E.3(iii) of the SAFAH guidelines, will not apply to those applications, and HUD will not consider environmental impacts or time delays associated with mitigation measures for such proposals in selecting such applications. Similarly, since under sections E.2(iii) and E.3(iii) of the

SAFAH guidelines, an application that requires an Environmental Impact Statement (EIS) will not be eligible for funding, this provision will be applied only to the applications for which HUD performs the environmental review. HUD will not enforce this provision where the applicant performs the environmental review, and after finding that an EIS is necessary, chooses to prepare the EIS.

On August 10, 1988, HUD amended its environmental regulations at 24 CFR Parts 50 and 58 to exclude certain activities under HUD homeless assistance programs from the NEPA requirements of Parts 50 and 58 (53 FR 30186). (The amendments were published in conjunction with HUD's final rule governing the Emergency Shelter Grants Program.) These "categorical exclusions" from NEPA review are for activities that HUD believes lack potential significant effect on the human environment. Specifically, the activities consist of such services as health, substance abuse and counseling services, the provision of meals and payment of rent, utility and maintenance costs, and similar activities that do not involve physical change to buildings or sites. Environmental review focuses on new site selection and physical development activities such as construction, property rehabilitation, renovation, and conversion. Although the activities described above and certain other activities may be categorically excluded from the NEPA requirements, they are not excluded from the individual compliance requirements of other environmental statutes, executive orders, and HUD standards listed in §§ 50.4 and 58.5, where applicable. However, activities consisting solely of supportive services and software normally do not require environemtal review under NEPA *or* the related authorities if they do not directly require physical development or site selection (*i.e.*, use of a building not previously used for purposes of this program). Activities that trigger neither NEPA nor the related authorities are defined as "exempt" under Part 58. Where applicants exercise environmental review under section 104(g) and Part 58, procedures for applicant submission of environmental certifications and Requests for Release of Funds apply to new site selection and to the funding of physical development activities. These procedures do not apply to activities that are determined and documented to be "exempt."

Applicants and grantees are cautioned that under section 104(g), HUD may not release SAFAH funds for a project if the grantee, a subgrantee, or another party commits SAFAH funds (*i.e.*, incurs any costs or expenditures to be paid for or reimbursed with such funds) before the grantee submits its request for release of SAFAH funds to HUD.

4. *Floodplain restrictions.* Section 451 of the 1988 Amendments Act requires that the flood protection standards for housing acquired, rehabilitated, or assisted with Supportive Housing Demonstration funds may be no more restrictive than those applicable under Executive Order 11988, Floodplain Management (May 24, 1977) to the other programs under Title IV of the McKinney Act. HUD has determined that this provision should be applied to the SAFAH program as well. Therefore, the restrictions with respect to location of projects in floodplains contained in sections E.2(i)(b)(3)(*c*) and E.3(i)(b)(4)(*c*) of the SAFAH guidelines will no longer apply to projects assisted under SAFAH. HUD interprets Section 451 to mean that, for projects located in floodplains, the eight-step process of public notification and decisionmaking outlined in the U.S. Water Resources Council Floodplain Management Guidelines (43 FR 6030, February 10, 1978) must be undertaken before any decision is made on the environmental acceptability of the project site for homeless assistance. Grantees will perform the eight-step process whenever they assume other environmental review responsibilities (see section III.3), doing so during the environmental review process.

The eight-step process applies to all applications for projects within the 100-year floodplain and, for critical actions, the 500-year floodplain. Critical actions are defined as those projects intended to serve developmentally disabled, chronically mentally ill, or mobility imparied residents. Applicants with proposed projects located in a floodplain should be aware that the public notification and decisionmaking period takes a minimum of 30 days from the time the first published notice in the process appears. Where HUD will carry out the process, applicants may be required to provide engineering and structural information (*e.g.*, elevations and data) in order to permit HUD to undertake its analysis. If HUD is unable to make a floodplains determination within 60 days from the date it publishes the first notice (where HUD has the responsibility for carrying out the eight-step process), and the applicant has not provided the HUD-requested information in a timely manner, the application will be rejected.

Executive Order 11988 requires HUD or the applicant (where it assumes environmental review responsibilities) to consider alternatives to avoid adverse impacts associated with the occupancy and modification of floodplains. The alternatives may include actions resulting in less risk to human life or property. The review process may result in specific mitigation requirements or rejection of the site or application for assistance. As part of the eight-step process, HUD or the applicant must reevaluate alternatives to projects/sites located in floodplains and, where HUD performs the process, HUD will assign a higher environmental rating to applications with less hazardous sites. If, after initial approval, an applicant changes the site, any new site will be subject to a complete environmental review, including, as applicable, the eight-step public notification and decisionmaking procedure for sites located in floodplains.

The Flood Disaster Protection Act of 1973 (42 U.S.C. 4128) and HUD regulations prohibit the approval of applications for projects/sites located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless: (1) The community in which the area is situated is participating in the National Flood Insurance Program (not suspended or withdrawn) (see 44 (CFR Parts 59–79) or less than a year has passed since FEMA notification regarding such hazards; and (2) flood insurance is obtained as a condition of approval of the application.

Applicants with projects/sites (determined through the eight-step process to be environmentally acceptable) that are located in an area that has been identified by FEMA as having special flood hazards will be required to obtain and maintain flood insurance under the National Flood Insurance Program. This is a separate requirement from the Executive Order 11988 procedures, and the availability of flood insurance does not satisfy the eight-step public notification and decisionmaking procedure of the Floodplain Management Guidelines.

5. *Drug- and alcohol-free facilities.* Section 402 of the 1988 Amendments Act requires grantees, recipients, and project sponsors under each of the homeless housing programs authorized by Title IV of the McKinney Act to administer, in good faith, a policy designed to ensure that the homeless facility is free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries. For more information concerning this requirement, potential

applicants are encouraged to read the notice on Comprehensive Homeless Assistance Plans, published in the **Federal Register** on December 28, 1988 (53 FR 52600).

IV. Proposed Changes to SAFAH Guidelines

1. *Outpatient health services.* The definition of "outpatient health services" in section A of the SAFAH guidelines would be changed to exclude outpatient substance abuse services. HUD believes these services are adequately covered under the definition of "supportive services."

2. *Ranking criteria for comprehensive assistance.* An additional ranking factor on cost-effectiveness would be included for applications for comprehensive assistance (see section E.2.(ii) of the SAFAH guidelines). (This ranking factor is already included for applications for excess assistance (see section E.3.(ii)(c).) Under the cost-effectiveness factor for comprehensive assistance, HUD would consider the extent to which the applicant's proposed costs under the proposal are reasonable in relation to the work done and the goods and services purchased, and are effective in accomplishing the purposes of the proposal.

V. Other Matters

The collection of information requirements contained in this Notice and in the SAFAH guidelines were submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Section III of this notice has been determined by the Department to contain new collection of information requirements not included in the Department's assessment of the burden of these requirements when it was originally approved by OMB. Information on the reporting burden is provided as follows:

	Number of respondents	Frequency of response	Hours per response	Burden hours
Applications:				
Comprehensive	250	1	100	25,000
Supplemental	30	1	52	1,560
Total annual burden				26,560

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding is available for public inspection during regular business hours at the Office of Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that the changes to the SAFAH program announced in this Notice will not have a potential significant impact on the formation, maintenance, and general well-being of participating homeless families. The changes are either procedural or of little substantial significance. In addition, the Notice announces statutorily imposed requirements over which HUD has little or no implementing discretion.

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the amendment made by section 443 of the 1988 Amendments Act will have federalism implications. That section provides that HUD shall apply the provisions of, and regulations and procedures applicable under, section 104(g) of the Housing and Community Development Act of 1974 to assistance and projects under Title IV of the McKinney Act. Section 104(g) provides that the Secretary may require applicants with the legal capacity to do so to assume the responsibilities for environmental review, decisionmaking, and action under the National Environmental Policy Act of 1969 and the other provisions of law specified by the Secretary that would apply to HUD were HUD to undertake such projects as Federal projects. HUD is announcing in this notice that it will require States and other governmental entities with general governmental powers to assume those responsibilities. While the delegation of these responsibilities under section 104(g) is discretionary with HUD, it is authorized by, and clearly the intent of, section 443 of the 1988 Amendments Act. Therefore, the policy is not subject to further review under Executive Order 12612.

This document was not listed on the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974).

The Catalog of Federal Domestic Assistance program number is 14.510.

Dated: January 4, 1989.

Kenneth J. Beirne,

Assistant Secretary for Policy Development and Research.

[FR Doc. 89-553 Filed 1-10-89; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-09-4111-15; WYW84965]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW84965 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW84965 effective August 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 89-519 Filed 1-10-89; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-09-4111-15; WYW29920]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW29920 for lands in Sublette County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in

sections 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW29920 effective August 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 89-520 Filed 1-10-89; 8:45 am]

BILLING CODE 4310-22-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Investment Opportunity; Bolivia

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan to the Government of Bolivia (the "Borrower"), acting through the Central Bank of Bolivia, as part of A.I.D.'s development assistance program. The proceeds of this loan will be used to finance shelter programs for low-income families in Bolivia. The following is the address of the Borrower and the loan amount and terms for which the Borrower is requesting proposals from U.S. lenders or investment bankers:

Bolivia

Project: 511-HG-007—$7.5 Million.

Lic. Fernado Caceres P., Gerente de Division de Supervision de Lineas Gerencia de Desarrollo, Banco Central de Bolivia, Ayacucho Esquina Mercado S/N, Cajon Postal No. 3118, La Paz, Bolivia, Telex No.: NAVIANA 3398, Telefax No.: 377122—366636, Telephone No.: 374151 Ext. 170 or 351458.

Interested lenders should telex their bids to the Borrower's representative by January 24, 1989, 12:00 noon New York Time. Bids should be valid for a period of 72 hours. Copies of all bids should be simultaneously sent to the following:

Michael G. Kitay/Barton Veret, Agency for International Development, GC/PRE, Room 3328 N. S., Washington, DC 20523, Telephone: 202/647-8235, Telex No.: 892703 AID WSA, Telefax No.: 202/647-4958 (preferred communication).

USAID/La Paz, Attention: Mr. Dino Siervo, Private Sector Office (PSO), (street address: Avenida 16 de Julio, Edificio del Banco de Industrial (BISA)), La Paz, Bolivia, Telephone No.: 591/2/350-120, Telex No.: 3532 USAID BV.

Mr. Francis Conway, Assistant Director/South America, RHUDO/Quito, USAID/Quito, APO Miami 34039, (street address: 1573 Ave. Colombia by Queseras del Medio Edificio Computec, 30 Piso, Quito, Ecuador, Telephone No.: 593/2/521-100 or 544-365, Telefax No.: 593/2/561-228 or 502-052, Telex No.: 23239 UCICA ED.

For your information the Borrower is considering the following terms:

1. *Amount:* U.S. $7.5 million with capitalization of interest during the grace period of 3 years.

2. *Term:* Up to 30 years.

3. *Grace period:* Ten years grace period for payment of principal and 3 years grace period on interest payments. Proposals should consider providing Borrower with the option of repaying capitalized interest in full at the end of the 3 years grace period on interest.

4 *Payment:* The payment for the service of the debt will be on a semi-annual basis.

5. *Interest rate:* The rate of interest sould be quoted in relation to the Libor rate. The proposals should include both fixed interest rate and variable interest rate alternatives. The option for Borrower to convert from variable to fixed or vice versa, should be addressed.

6. *Drawdowns:* The Loan should be disbursed in full by the Investor not later than February 15, 1989.

7. *Prepayment:* Proposals should include the possibility of partial or total prepayment of the loan by the Borrower.

8. *Fees and contracting expenses:* Proposals should specify the contracting expense and fees.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. Disbursement under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loan will be guaranteed by A.I.D. The A.I.D. guaranty would be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporation whose share capital is at least 95 percent owned by U.S. citizens; and (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from:

Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 401, SA-2, Washington, DC 20523, Telephone: 202/633-2530.

Dated: January 6, 1989.

William Gelman,

Assistant Director for Operations Office of Housing and Urban Programs Agency for International Development.

[FR Doc. 89-612 Filed 1-9-89; 11:04 am]

BILLING CODE 6116-01-M

Housing Guaranty Program; Investment Opportunity; Ecuador

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan for the Government of Ecuador (the "Borrower") as part of A.I.D.'s development assistance program. The proceeds of this loan will be used to finance shelter projects for low-income families in Ecuador. The Government of Ecuador has authorized A.I.D. to request proposals from eligible investors. The name and address of the Borrower's representative to be contacted by interested U.S. lenders or investment bankers, and the amount of the loan and project number are indicated below:

Government of Ecuador

Project: 518-hg-007—$10 million.

Ing. Jorge Gallardo Zavala, Ministro de Finanzas y Credito Publico, Attn: Ing. Edison Ortiz Duran, Subsecretaria de Credito Publico, Ave. 10 de Agosto 1661 y Jorge Washington, Quito, Ecuador, Telex No.: 2449 MIN FIN ED, Telefax No.: 593/2/564872, Telephone Nos.: 593/2/541908, or 543469, 500864, 568683.

Interested lenders should telex their bids to the Borrower's representative by January 24, 1989, 5:00 p.m. Eastern Standard Time. Bids should be open at least 48 hours. Copies of all bids should be simultaneously sent to the following:

Michael G. Kitay/Barton Veret, Agency for International Development, GC/PRE, Room 3328 N. S., Washington, DC 20523, Telephone: 202/647-8235, Telex No.: 892703 AID WSA, Telefax No.: 202/647-4958 (preferred communication).

Mr. Francis Conway, Assistant Director/South America, RHUDO/Quito, USAID/Quito, APO Miami 34039, (street address: 1573 Ave. Colombia y Queseras del Medio Edificio Computec, 30. Piso Quito, Ecuador, Telephone No.: 593/2/521-100 or 544-365, Telefax No.: 593/2/561-228 or 502-052 Telex No.: 23239 UCICA ED.

Each proposal should consider the following terms:

1. *Amount:* U.S. $10 million.
2. *Term:* Up to 30 years.
3. *Grace period:* Ten years on payment of principal.
4. *Interest rate:* Both fixed and variable rate, indicating, as appropriate, conditions placed upon conversion from variable rates to fixed rates.
5. *Payments:* Semi-annual.
6. *Prepayment:* Proposals should include the possibility of partial or total prepayment of the loan by the Borrower.
7. *Fees and contracting expenses:* Proposals should specify the contracting expense and fees.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loan will be guaranteed by A.I.D. The A.I.D. quaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and; (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from:

Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 401, SA-2, Washington, DC 20523, Telephone: 202/633-2530.

Dated: January 6, 1989.

William Gelman,

Assistant Director for Operations, Office of Housing and Urban Programs, Agency for International Development.

[FR Doc. 89-611 Filed 1-9-88; 11:04 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-276]

Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories, and Processes for Making Such Memories; Commission Decision

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to review the administrative law judge's initial determination (ID) that there is a violation of section 337 of the Tariff Act of 1930, as amended, in the above-referenced investigation with respect to certain issues, and has determined not to review the remainder of the ID. The Commission has requested parties and interested Government agencies to file written submissions on the issues on review. The parties to the investigation, interested government agencies, and interested members of the public are requested to file written submissions on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1093.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53-210.58 of the Commission's Interim Rules of Practice and Procedure (53 FR 33071-72, Aug. 29, 1988).

The Commission instituted this investigation on September 16, 1987, in response to a complaint filed on August 5, 1987, by Intel Corporation (Intel) of Santa Clara, California. A supplement to the complaint was filed on September 2, 1987. Amendments to the complaint were filed on October 13, 1987, January 12, 1988, March 3, 1988, and September 16, 1988. Intel originally complained of unfair acts and unfair methods of competition in the importation and sale of certain EPROMs and products containing same, by reason of alleged direct and induced infringement of six U.S. product patents, and the manufacture abroad of the subject EPROMs in accordance with a process which, if practiced in the United States, would infringe claims of two U.S. process patents. The complaint further alleged that the tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. The complaint, and the Commission's original notice of investigation, named seven respondents allegedly engaged in the manufacture, importation, and sale of allegedly infringing EPROMs.

On September 16, 1988, following enactment of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418 (Aug. 23, 1988), Intel moved to amend the complaint and notice of investigation to, *inter alia*, delete the allegation of tendency to substantially injure the domestic industry, and the allegation of efficient and economic operation. The presiding administrative law judge (ALJ) granted Intel's motion and issued an ID (Order No. 137) amending the complaint and notice of investigation. The Commission denied two respondents' petitions for review of the ID, but determined to review the ID on its own motion and modified the ID in order to incorporate the claims of the patents remaining in controversy, which were omitted from the amended notice of investigation as set forth in the ID. 53 FR 45399 (Nov. 9, 1988).

On November 16, 1988, the ALJ issued her final initial determination (ID), finding that there is a violation of section 337 in the importation of EPROMs or the manufacture of EPROMs for importation. Complainant and all respondents filed petitions for review of various portions of the ID. All parties filed responses to the petitions for review. Having examined the record in this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has concluded that there are issues that warrant review. Specifically, the Commission will review the following questions:

1. Whether, as a matter of policy, the Commission should apply the doctrine of assignor estoppel in its consideration of the issue of violation of section 337 in this investigation;

2. Assuming the Commission does apply the doctrine of assignor estoppel in its consideration of the issue of violation of section 337 in this investigation, whether any of the respondents are in privity with George Perlegos, assignor of four of the seven patents in controversy;

3. What is the scope of the domestic industry;

4. Whether U.S. Letters Patent 3,938,108 is valid, whether any of respondents' products in issue infringe claims 14–17 of that patent, and whether the domestic industry produces articles protected by those claims of the patent;

5. Whether U.S. Letters Patent 4,048,518 is valid, whether any of respondents' products in issue infringe claims 1–3 of that patent, and whether the domestic industry produces articles protected by those claims of the patent;

6. Whether U.S. Letters Patent 4,223,394 is valid and enforceable, whether any of respondents' products in issue infringe claims 1–6 of that patent, and whether the domestic industry produces articles protected by those claims of the patent. Review on the validity issue is limited to the questions of claim construction and obviousness;

7. Whether U.S. Letters Patent 4,519,050 is valid, whether any of respondents' products in issue, other than Atmel's 1 megabit part, infringe claims 1–4 of that patent, and whether the domestic industry produces articles protected by those claims of the patent;

8. Whether U.S. Letters Patent 4,103,189 is valid. Review is limited to the question of inventorship;

9. Whether U.S. Letters Patent 4,685,084 is valid, whether any of respondents' products in issue infringe claims 1–10 of that patent, and whether the domestic industry produces articles protected by those claims of the patent; and

10. Whether U.S. Letters Patent 4,114,255 is valid, whether any of respondents' products in issue infringe claims 1–5 and 7–8 of that patent, and whether the domestic industry produces articles protected by those claims of the patent.

The Commission has determined not to review the remainder of the ID, which has thereby become the determination of the Commission. The Commission has also determined to deny Atmel's appeal of the ALJ's ruling excluding certain evidence concerning the interpretation of the license agreement between Intel and Sanyo Electric Company, to deny Intel's request to reopen the record to allow introduction of additional evidence concerning Atmel's 1 megabit EPROM, and to deny Atmel's appeal of the ALJ's ruling allowing Intel to withdraw an exhibit relating to U.S. Letters Patent 4,048,518, upon which Atmel sought to rely as prior art. In addition, the Commission has taken under advisement the question of whether certain portions of the ID should be published, or whether they contain business confidential information which should not be published, and will make its decision at a later date.

If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist order(s) which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions which address the form of remedy, if any, which should be ordered.

If the Commission concludes that a violation of section 337 has occurred and contemplates some form of remedy, it must consider the effect of that remedy upon the public interest. The factors which the Commission will consider include the effect that an exclusion order and/or cease and desist order(s) would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those which are the subject of the investigation, and (4) U.S. consumers. The Commission is therefore interested in written submissions which address the aforementioned public interest factors in the context of this investigation.

If the Commission finds that a violation of section 337 has occurred and orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond which should be imposed.

Written Submissions

While the Commission has determined that no hearing before the Commission will be held in this investigation, the parties to the investigation and interested Government agencies are requested to file written submission on the issues under review and on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or proposed cease and desist order(s) for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding. Submissions on the issues of remedy, the public interest, and bonding are limited to forty (40) pages, excluding exhibits in support thereof, and twenty (20) pages in response, excluding exhibits in support thereof.

In connection with its review of the issues specified above, the Commission wishes to receive written submissions which are responsive to the following issues only:

1. With respect to the applicability of the doctrine of assignor estoppel, the parties should address the policy considerations in support of and opposed to the application of the doctrine in the violation phase of a section 337 investigation. In addition, the parties should address the concept of privity as it applies in the application of the doctrine of assignor estoppel, and as it applies in other areas of the law which may be analogous for purposes of analysis. Finally, the parties should address whether any of the respondents are in privity with George Perlegos, assignor of four of the patents in controversy.

2. With respect to U.S. Letters Patent 3,938,108, the parties should address the following issues:

a. Whether the term "sense amplifier" should be construed as meaning a differential sense amplifier;

b. Whether the ALJ was correct in construing the claims as requiring that the branches of the sense amplifier be coupled in parallel through a common node, *see* ID at 82;

c. Whether the accused EPROMs infringe the claims in controversy under the doctrine of equivalents, specifying how the function, way, and result test of *Graver Tank* v. *Linde Air Prod. Co.*, 339 U.S. 605 (1950) is met, and citing record support for findings of fact on these issues.

3. With respect to U.S. Letters Patent 4,048,518, the parties should address the following issues:

a. Whether the ALJ's definition of an "inverter" (ID at 121) is correct and whether she was correct in her finding that claim 1 "does not require that the

inverter always perform an inversion function," *id.*;

b. Whether the ALJ's determination that "decoupling [in reference to the claimed decoupling transistor] may include something less than completely turning off the transistor so that the transistor ceases to conduct (or in an MOS transistor ceases to conduct *significant* current)," ID at 123;

c. Whether an MOS transistor operating in saturation ceases to conduct significant current;

d. Whether the ALJ correctly construed the claim elements "controlled variable potential means" and "MOS circuit for providing an output signal in response to an input signal;"

e. Whether the accused EPROMs infringe the claims in controversy under the doctrine of equivalents, again citing record support for the findings required by *Graver Tank.*

4. With respect to U.S. Letters Patent 4,223,394, the parties should address the following issues:

a. Construction of the claim terms "first biasing means," "second biasing means," and "comparator means;"

b. Whether there is any teaching in the prior art that suggests the combination of U.S. Letters Patent 4,094,012 and U.S. Letters Patent 3,398,108 so that when the claimed invention is viewed as a whole it would have been obvious to a person of ordinary skill in the art at the time that the claimed invention was made;

c. Whether it is appropriate to limit the claims to preserve the enforceability of the patent.

d. Whether the accused EPROMs infringe the claims in controversy under the doctrine of equivalents, again citing record support for the findings required by *Graver Tank.*

5. With respect to U.S. Letters Patent 4,519,050, the parties should address the following issues:

a. Whether the ALJ construed the claim phrase "permanently programmed" by reference to the accused devices and, if so, whether this construction is improper. Specific reference should be made to the language in the ID beginning with the third full paragraph of page 214 and continuing through the first eight lines on page 216.

b. Whether the accused devices are "permanently programmed" within the meaning of the terms of the relevant claims.

6. With respect to U.S. Letters Patent 4,103,189, the parties should address the question of invalidity due to incorrect inventorship under 35 U.S.C. 102(f). Specifically, the parties should state whether there is any evidence in the record on the correctness or incorrectness of inventorship, citing to the record.

7. With respect to U.S. Letters Patent 4,685,084, the parties should address whether the ALJ construed the claim phrase "programmable selection means" to include process steps.

8. With respect to U.S. Letters Patent 4,114,255, the parties should address the extent to which the reverse doctrine of equivalents has been raised, and as appropriate, the precise manner in which it was raised. The parties should also address whether the doping concentration in the channel region must attain a minimum level of 2×10^{16} per cubic centimeter in order for the claims to be operative. Lastly, the parties should address the language in the specification of the patent at column 3, lines 7–9, and comment on whether that is an accurate teaching of this patent.

The submissions should be concise and thoroughly referenced to the record in this investigation, including references to specific exhibits and testimony. The submissions are limited to seventy-five (75) pages with respect to the patent validity, infringement, and practice by the domestic industry issues, and an additional twenty-five (25) pages with resepct to the assignor estoppel issue. Submissions in response are limited to forty (40) pages with respect to the patent validity, infringement, and practice by the domestic industry issues, and an additional twelve (12) pages with respect to the assignor estoppel issue. Written submissions on the issues enumerated above, and on remedy, the public interest, and bonding, must be filed by Monday, January 23, 1989. Submissions in response concerning the enumerated issues, and on remedy, the public interest, and bondings, must be filed by Monday, January 30, 1989.

Additional Information

Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the investigation. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public interest at the Office of the Secretary.

Notice of this investigation was published in the **Federal Register** of September 16, 1987 (52 FR 35004).

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: January 3, 1989.

[FR Doc. 89–574 Filed 1–10–89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-424 (Preliminary)]

Martial Arts Uniforms From Taiwan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Taiwan of martial arts uniforms,[2] normally provided for in items 381.08, 381.32, 381.63, 381.97, 384.09, 384.24, 384.50, and 384.92 of the Tariff Schedules of the United States (subheadings 6203.22.10, 6203.23.00, 6203.29.20, 6204.22.10, 6204.23.00, and 6204.29.20 of the Harmonized Tariff Schedule of the United States), that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On November 15, 1988, a petition was filed with the Commission and the

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] For purposes of this investigation, "martial arts uniforms" refers to tops, pants, and belts, imported separately or as ensembles, for men, boys, women, girls, and infants, of cotton or of man-made fibers, whether ornamented or not ornamented, suitable for wearing while practicing all forms of martial arts, including but not limited to Judo, Karate, Kung Fu, Tae Kwon Do, Ninja, Ninjutsu, Hakama, Tai Chi, Jujitsu, and Hapkido.

Department of Commerce by Century Martial Art Supply, Inc., Midwest City, Oklahoma, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of martial arts uniforms from Taiwan. Accordingly, effective November 15, 1988, the Commission instituted preliminary antidumping investigation No. 731-TA-424 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 23, 1988 (53 FR 47587). The conference was held in Washington, DC, on December 6, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 30, 1988. The views of the Commission are contained in USITC Publication 2148 (January 1989), entitled "Martial Arts Uniforms From Taiwan: Determination of the Commission in Investigation No. 731-TA-424 (Preliminary) Under the Tariff Act of 1930, Together with the Information Obtained in the Investigation."

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: January 3, 1989.

[FR Doc. 89-576 Filed 1-10-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-282]

Certain Venetian Blind Components; Commission Decision not to Review an Initial Determination Terminating Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 20) issued by the presiding administrative law judge (ALJ) terminating the above-captioned investigation. The ID grants: (1) the Joint Motion of Complainant Hunter Douglas for Termination of Investigation with respect to Hunter Douglas, Inc. (Hunter Douglas) and A.J. Boyd Industries, Inc. (Boyd); (2) the Motion of Complainant Hunter Douglas for termination of Investigation with respect to Vogue Hardware Products (Vogue) and W&P Company Inc. (W&P); and (3) the Motion of Complainant Hunter Douglas for an Order Terminating Investigation with respect to Foreign Respondents with Prejudice. In granting all three motions, the ID terminates the investigation.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1105. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rules 210. 51 and 210.53 (53 FR 33069,70, August 29, 1988).

On November 22, 1988, complainant filed three motions to terminate the investigation with respect to all respondents. The motion to terminate with respect to domestic respondent Boyd was filed jointly with Boyd, and was based upon a settlement agreement between complainant and Boyd. The motion to terminate with respect to the other two domestic respondents (Vogue and W&P) was based upon separate settlement agreements between complainant and each respondent. The third motion requested voluntary termination with prejudice with respect to the four foreign respondents, in light of the settlement agreements with all three domestic respondents.

The Commission investigative attorney filed a public interest statement supporting the motions to terminate the investigation. On December 7, 1988, the ALJ issued an ID granting all three motions, and terminating the investigation. No petitions for review or agency or public comments were received.

By order of the Commission.

Issued: January 3, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-575 Filed 1-10-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-298 (Preliminary)]

Fresh, Chilled, or Frozen Pork From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary countervailing duty investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701-TA-298 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of fresh, chilled, or frozen pork, provided for in heading 0203 of the Harmonized Tariff Schedule of the United States (HTS) (previously provided for in item 106.40 of the Tariff Schedules of the United States), that are alleged to be subsidized by the Government of Canada. As provided in section 703(a), the Commission must complete preliminary countervailing duty investigations in 45 days, or in this case by February 21, 1989.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: January 5, 1989.

FOR FURTHER INFORMATION CONTACT: Lisa Zanetti (202-252-1189) or Fred Rogoff (202-252-1179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted in response to a petition filed on January 5, 1988, by The National

Pork Producers' Council, Des Moines, IA and others.[1]

Participation in the investigations. Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list. Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order. Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this preliminary investigation to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference. The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on January 26, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Lisa Zanetti (202-252-1189) not later than January 24, 1989, to arrange for their appearance. Parties in support of the imposition of countervailing duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions. Any person may submit to the Commission on or before January 30, 1989, a written brief containing information and arguments pertinent to the subject matter of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than February 2, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: January 6, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-671 Filed 1-10-89; 8:45 am]

BILLING CODE 7020-02-M

[1] Arkansas Pork Producers' Council, Atkins, AR; Colorado Pork Producers' Council, Eaton, CO; Idaho Pork Producers' Association, Caldwell, ID; Illinois Pork Producers' Association, Springfield, IL; Indiana Pork Producers' Association, Indianapolis, IN; Iowa Pork Producers' Association, Clive, IA; Michigan Pork Producers' Association, Lansing, MI; Minnesota Pork Producers' Association, Albert Lea, MN; Nebraska Pork Producers' Association, Lincoln, NE; North Carolina Pork Producers' Association, Raleigh, NC; North Dakota Pork Producers' Council, Leith, ND; Ohio Pork Producers' Council, Westerville, OH; Wisconsin Pork Producers' Association, Lancaster, WI; National Pork Council Women, Des Moines, IA; ConAgra Red Meats, Inc., Greeley, CO; Dakota Pork Industries, Inc., Minneapolis, MN; Farmstead Foods, Albert Lea, MN; IBP, Inc., Dakota City, NE; Illinois Pork Corporation, Monmouth, IL; Thorn Apple Valley, Southfield, MI; Wilson Foods, Oklahoma City, OK.

INTERSTATE COMMERCE COMMISSION

[No. MC-C-30129]

Pittsburgh-Johnstown-Altoona Express, Inc.; Petition for Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Notice of institution of proceeding.

SUMMARY: The Commission is granting the request by Pittsburgh-Johnstown-Altoona Express, Inc. (PJAX), a motor carrier, for institution of a declaratory order proceeding to determine whether the transportation of various shipments of property between points in Pennsylvania is in interstate commerce. The shipments involved appear to fall within two categories: (1) Shipments moved between points in Pennsylvania through other States; and (2) pool distribution traffic and warehouse traffic transported by PJAX within Pennsylvania but having prior movements from out-of-State origins.

DATE: Persons interested in participating in this proceeding should so advise the Commission in writing by January 26, 1989.

A list of interested parties will then be compiled and served. PJAX will have 10 days after the service date of that list to serve each party on the list and the Commission with a copy of its petition and any additional comments. Other parties will then have 35 days after the service date of the service list to submit their comments to the Commission and to PJAX's representatives. PJAX will have 50 days after the service date of the service list to reply.

ADDRESSES: Send written notice of intent to participate, and an original and, if possible, 10 copies of comments, referring to No. MC-C-30129, to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Send one copy of comments to each of PJAX's representatives: Arthur J. Diskin, 1450 Two Chatham Center, Pittsburgh, PA 15219, and Christian V. Graf, Graf,

Andrews & Radcliff, P.C., 407 North Front Street, Harrisburg, PA 17101.

FOR FURTHER INFORMATION CONTACT: James L. Brown, (202) 275-7898, Richard B. Felder, (202) 275-7691. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275-7428. [Assistance for the hearing impaired is available through TDD service: (202) 275-1721.]

Decided: January 3, 1989.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-601 Filed 1-10-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 244)]

CSX Transportation, Inc.; Abandonment Between Willow and Ellenton Junction—in Manatee County, FL; Findings

The Commission has issued a certificate authorizing CSX Transportation, Inc. to abandon its 15.1-mile rail line between Willow (milepost SW-854.0) and Ellenton Junction (milepost SW-869.1) in Manatee County, FL. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Noreta R. McGee,

Secretary.

[FR Doc. 89-602 Filed 1-10-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31360]

Decision; South Carolina Central Railroad Co., Inc.; Purchase and Lease

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision accepting application for consideration.

SUMMARY: The Commission is accepting for consideration the application, filed December 8, 1988, by the South Carolina Central Railroad Company, Inc. (SCRF), to acquire, from CSX Transportation, Inc. (CSXT), by purchase and lease, 258.82 miles of rail line, between Rhine, GA and Mahrt, AL, and between Columbus and Bainbridge, GA. CSXT will retain trackage rights over SCRF between Bainbridge and Lynn, GA, and between Cordele, GA, and milepost SL 666.93. Pursuant to 49 CFR Part 1180, the Commission finds this to be a minor transaction.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than February 10, 1989. Comments from the Secretary of Transportation and Attorney General of the United States must be filed by February 27, 1989. Applicant's reply is due by March 20, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

ADDRESSES: An original and 10 copies of all documents must be sent to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31360, Interstate Commerce Commission, Washington, DC 20423.

In addition, one copy of all documents in this proceeding must be sent to each of applicants' representatives: Lawrence H. Richmond, Peter J. Shudtz, 100 North Charles Street, Baltimore, MD 21201; Kelvin J. Dowd, 1224 17th Street NW., Washington, DC 20036.

SUPPLEMENTAL INFORMATION: By application filed December 8, 1988, South Carolina Central Railroad Company, Inc. (SCRF) and CSX Transportation, Inc. (CSXT), collectively referred to as applicants, seek Commission approval under 49 U.S.C. 11343, *et seq.*, for SCRF to acquire, by purchase and lease, 258.82 miles of CSXT lines in Georgia and Alabama. SCRF will purchase for $5 million CSXT's lines between milepost SL 629.25 near Rhine, GA, and milepost SL 755.13 near Mahrt, AL; between milepost SLB 0.38 near Columbus, GA, and milepost SLB 39.77 near Richland, GA; between milepost SLC 91.68 near Bainbridge, GA, and milepost SLC 181.55 near Richland, GA; between Valuation Station 41+60 and Valuation Station 107+35 near Columbus, GA (Dummy Line); and between Valuation Station 0+00 to Valuation Station 41+61 near Columbus, GA (the Georgia Ports Authority lead). Also, SCRF will lease from CST trackage at Lynn, GA, from milepost SLC 96.66 over Tracks SV 4 (6,875 feet), SV 12 (1,360 feet), and SV 14 (400 feet) for a 20-year period for an amount to be determined by the number of carloads that originate or terminate on the leased line. CSXT will retain trackage rights over the lines to be acquired by SCRF between Bainbridge and Lynn, and between Cordele, GA, and milepost SL 666.93. SCRF will acquire trackage rights over CSXT lines between milepost SLC 91.68 and CSXT's yard in Bainbridge and between Bainbridge and Saffold, GA. Applicants contend that this is a minor transaction under 49 CFR 1180.2(c), and they submitted an application in accordance with the railroad consolidation procedures at 49 CFR Part 1180 for minor transactions. The parties intend to consummate the transaction as soon as possible after final Commissioin approval.

SCRF is a Class III common carrier controlled by a non-carrier, Railtex, Inc. CSXT is a Class I common carrier and a unit of CSX Corporation. SCRF now operates 55.2 miles of lines between Florence and Bishopville, SC, and between Cheraw and Society Hill, SC. These lines do not connect with the line to be acquired (or with another line between White Oak and Smithville, GA, that SCRF intends to acquire from Norfolk Southern Corporation).

At present there are approximately 125 shippers using the line to be acquired. CSXT handled a total of 12,667 originating or terminating carloads in 1987 and indicates that the volume of traffic in 1988 is about the same.

Applicants state that the proposed transaction will result in operating economies and improved service, enhancing the financial viability of both applicants. Specifically, the proposed transaction will enable SCRF to enter a new market and spread its administrative, insurance, and operating costs over a larger base. SCRF claims this will result in operating efficiencies that will allow it to offer better service at more competitive prices. CSXT, on the other hand, will no longer have to maintain what is for it a marginally profitable operation.

Applicants also state that the transaction will improve service. As a small local carrier, SCRF assertedly will be better able to accommodate the needs of the lines shippers.

Because SCRF will be replacing CSXT, applicants contend that the proposed transaction will not cause a monopoly or reduce rail competition. Rather, they submit the transaction is more likely to reduce CSXT's market power in the region. Also, the area is served by a significant number of water and motor carriers. Applicants expect the transaction to result in increased competition, with SCRF offering efficient, price competitive service. SCRF anticipates that will be able to draw traffic away from motor carriers.

SCRF intends to operate the line with its own employees. As a result, CSXT's work force, will be reduced to by 54 positions. Additionally, certain of CSXT's officers and managers will be affected. No positions with SCRF will be eliminated. SCRF expects to hire additional employees to operate the acquired line and states that it will offer these positions to the former CSXT employees on a preferential basis.

CSXT states it intends to negotiate employee protection agreements with affected employees pursuant to the conditions set forth in *New York Dock Railway—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979). These conditions are appropriate for employees affected by the acquisition. In the event that there are employees affected only by the lease, the appropriate conditions will be those contained in *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980). Any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978) as modified in *Mendocino* at 360 I.C.C. 653.

Under the consolidation regulations, we must determine initially whether a proposed transaction is major, significant, minor, or exempt. The proposed transaction involves a Class I and a Class III railroad. It has no regional or national significance and will neither result in a major market extension nor reduce the present level of competition. Accordingly, we find the proposal a minor transaction under 49 CFR 1180.2(c). Because the application complies with the applicable regulations governing minor transactions, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicants' representatives named above.

Any interested persons, including government entities, may participate in this proceeding by submitting written comments regarding the application. Comments must be filed no later than February 10, 1989. The Secretary of Transportation and the Attorney General of the United States must file their comments no later than February 27, 1989. An original and 10 copies must be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423.

Written comments must be served concurrently by first-class mail on the United States Secretary of Transportation, the Attorney General of the United States, and applicants' representatives. Written comments must also be served on all parties of record within 10 days of service of the service list by the Commission. We plan to issue the service list by February 27, 1989. Any person who files timely written comments shall be considered a party of record if the person's comments so request. In this event, no petition for leave to intervene need be filed. Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) The commenting party's position, *i.e.*, whether it supports or opposes the proposed transaction;

(d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;

(e) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that the proposal in this proceeding constitutes a minor transaction, no responsive applications will be permitted. The time limits for processing a minor transaction are set forth at 49 U.S.C. 11345(d).

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. This proposal is found to be a minor transaction under 49 CFR 1180.2(c).

2. The application in Finance Docket No. 31360 is accepted for consideration.

3. The parties shall comply with all provisions as stated above.

4. This decision is effective on the date of service.

Decided: January 3, 1989.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-603 Filed 1-10-89; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Astronomical Sciences (ACAST) Subcommittee on the Functioning of ACAST; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Astronomical Sciences (ACAST) Subcommittee on the Functioning of ACAST.

Date & Time: January 25 and 26, 1989—9:00 A.M.-5:00 P.M.

Place: National Science Foundation—Room 642.

Type of Meeting: January 25 and 26, 1989—Open.

Contact Person: Dr. Laura P. Bautz, Director, Division of Astronomical Sciences, Room 615, National Science Foundation, Washington, DC 20550 (202/357-9488).

Summary Minutes: May be obtained from the contact person at the above address.

Purpose of Meeting: To advise on ACAST organization and operation with particular emphasis on how ACAST gives timely advice on budgetary matters and scientific priorities in a manner useful to the National Science Foundation staff.

Agenda: Functioning of Federal Advisory Committees; Other Examples of Federal Advisory Committees; Role of Decade Survey; Timing of NSF Budget Process; Discussion of Future Functioning of ACAST.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-595 Filed 1-10-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97–415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 16, 1988 through December 29, 1986. The last biweekly notice was published on December 30, 1988 (53 FR 53086).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, D.C. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 10, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide

for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: December 14, 1988

Description of amendments request: The proposed amendment will add Technical Specifications for the reactor vessel level indicating system (RVLIS) which has been installed per Generic Letter (GL) 82-28 and NUREG-0737, Item II.F.2. In addition, an editorial change is made for Unit 1 to remove a one time change approved by Amendment No. 34.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee's findings regarding the RVLIS change are summarized below:

1. The proposed change will not increase the probability or consequences of an accident previously evaluated. The RVLIS is neither credited nor required for the mitigation of any previously evaluated accident, and is not relied upon for reactor trip or initiation of any plant safety system. Therefore, the proposed change does not affect the probability or consequences of an accident previously evaluated.

2. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change is intended solely to enhance the ability of the operator to manage accidents and transients by providing the operator with additional corroborative information.

3. The proposed change will not involve a reduction in a margin of safety. The components installed within the reactor vessel were designed and fabricated to produce the same flow effect as the control rod drive mechanism guide tubes which they replaced. Existing technical specifications provide assurance that the minimum thermal design flow is maintained. The specific purpose of the proposed amendment is to enhance accident and transient monitoring capabilities and thus increase the margin of safety. If four of the eight sensors are functioning, the operator can determine if a void has formed, if it is growing, or if the corrective action is succeeding in reducing the void. These requirement are considered adequate to track the course of an accident.

Based on the above reasoning, the license has determined that the proposed change involves no significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. In addition, the Commission guidance (51 FR 7751) notes certain examples of amendments that are not likely to involve a significant hazards consideration. One example is "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement." The proposed change concerning the RVLIS fits this example. Concerning the editorial change to the Unit 1 Technical Specifications, example (i), "A purely administrative change: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature" applies. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Houston—Love Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Attorney for licensee: Ernest L. Blake, Esquire, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: Elinor G. Adensam.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: October 28, 1988

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) for Brunswick Steam Electric Plant, Units 1 and 2 by modifying footnote * * *, in Table 1.2, entitled "Operational Conditions" on page 1-10 for Unit 1 and page 1-11 for Unit 2. The revised footnote would allow the reactor mode switch to be placed in the Refuel position while a single control rod is being moved, as opposed to only when being recoupled, provided the one-rod-out interlock is operable.

Basis for proposed no significant hazard consideration determination: The Commission has provided standards for determining whether no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from

any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The Carolina Power & Light Company (CP&L) has reviewed the proposed changes to TS Table 1.2 and has determined that the requested amendment does not involve a significant hazards consideration for the following reasons:

1. Revising Footnote * * * to more clearly allow movement as opposed to recoupling of a single control rod does not involve a significant increase in the probability or consequences of an accident previously evaluated. The Brunswick Technical Specifications currently allow, while in Operational Conditions 3 (Hot Shutdown) or 4 (Cold Shutdown), the reactor mode switch to be placed in the Refuel position from the Shutdown position while a single control rod is being recoupled provided that the one-rod-out interlock is operable (Footnote * * * to Table 1.2). The proposed change will allow the operator to move a control rod for testing or recoupling while the unit is in either Operational Condition 3 or 4. This will be in addition to control rod testing already permitted by the Brunswick Technical Specifications in Operational Conditions 2 (Startup) and 5 (Refueling).

When the mode switch is in the Refuel position, criticality cannot be achieved, even with one control rod completely removed from the core. Currently, only a single control rod may be removed from the core at any given time while the mode switch is in the Refuel position. This maintains the shutdown margin of the plant and enforces the shutdown margin electronically. The proposed change will not impact these mechanisms, and the same shutdown margin will be maintained. Thus, the probability of an accident will not be significantly changed.

Control rod recoupling involves moving the control rod from full-in to full-out and vice-versa. Control rod testing involves recording the time it takes for the control rod to be withdrawn from full-in to full-out and from full-out to full-in. Thus, the movement involved in recoupling a rod bounds the movement involved in control rod testing. Therefore, the consequences of any accident that could occur during control rod testing would be bounded by those that could occur during recoupling. Thus, the consequences of an accident will not be changed.

2. The Brunswick Technical Specifications currently allow, while in Operational Conditions 3 or 4, the reactor mode switch to be placed in the Refuel position from the Shutdown position while a single control rod is being recoupled provided that the one-rod-out interlock is operable (Footnote * * * to Table 1.2). Movement of a control rod through the recoupling process encompasses any possible position the control rod can be placed in when being moved. In addition, when the mode switch is in the Refuel position, criticality cannot be achieved, even with one control rod completely removed from the core. Currently, only a single control rod may be removed from the core at any given time while the mode switch is in the Refuel position. This maintains the shutdown margin of the plant and enforces the shutdown margin electronically.

The proposed change will not impact the existing plant protective system and the same shutdown margin will be maintained. No modifications are being made that will decrease the shutdown margin or jeopardize the safety functions of the protection system. Thus, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change will not impact the existing plant protective system and the same shutdown margin will be maintained. When the mode switch is in the Refuel position, criticality cannot be achieved, even with one control rod completely removed from the core. Currently, only a single control rod may be removed from the core at any given time while the mode switch is in the Refuel position. This maintains the shutdown margin of the plant and enforces the shutdown margin electronically. No modifications are being made that will decrease the shutdown margin or jeopardize the safety functions of the protective system. Thus, the proposed amendment does not involve a significant reduction in the margin of safety.

The staff has reviewed the CP&L determinations and is in agreement with them. Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3298.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: Elinor G. Adensam.

Carolina Power and Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant (SHNPP), Wake and Chatham Counties, North Carolina

Date of Amendments Request: November 9, 1987

Description of Amendments Request: The purpose of the proposed amendment is to change the general limiting conditions for operation (LCO) and general surveillance requirements (SR) of the Technical Specifications (TS) for SHNPP, TS 3.0.4, 4.0.3 and 4.0.4, and the Bases Sections associated with Sections 3.0 and 4.0, as well as to modify numerous other TS sections to conform to the revised general LCO and general SR. The proposed changes are in response to the Commission's Generic Letter (GL) 87–09, "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements," issued June 4, 1987.

Currently, TS 3.0.4 does not allow entry into an OPERATIONAL CONDITION unless the conditions of the specific LCO are met without reliance on provisions contained in the ACTION statements. This unduly restricts facility operation when conformance to the ACTION requirements provides an acceptable level of safety for continued operation. The proposed revision to TS 3.0.4 would allow entry into an OPERATIONAL CONDITION in accordance with ACTION requirements when conformance to the ACTION requirements provides an acceptable level of safety for continued operation of the facility for an unlimited period of time. This is consistent with the guidance provided in GL 87–09. In order to prevent operator confusion, individual exceptions to TS 3.0.4 are to be deleted where appropriate.

Currently, TS 4.0.3 states that performance of an SR within the specified time interval shall constitute compliance with the OPERABILITY requirements for an LCO and associated ACTION statements. If an SR is not met as a result of failure to perform the scheduled surveillance, the LCO would not be met and the associated ACTION requirements must be entered. If the missed surveillance cannot be successfully performed during the time interval specified, a plant shutdown is usually required. It is considered overly conservative to assume that a system or component is inoperable when an SR has not been performed. The proposed revision to TS 4.0.3 provides a delay of up to 24 hours to permit the completion

of a missed surveillance when the time allowed by the ACTION requirements is less than 24 hours. The 24-hour time limit balances the risks associated with an allowance for completing the surveillance against the risks associated with the potential for a plant transient and a challenge to safety systems when the alternative is a shutdown to comply with ACTION requirements before the surveillance can be completed, and is consistent with the guidance provided in GL 87-09.

Currently, TS 4.0.4 prohibits entry into an OPERATIONAL CONDITION unless the SR associated with the LCO have been performed within the applicable surveillance interval. This creates a conflict when a mode change is required, as a consequence of shutdown ACTION requirements, and the associated SR that become applicable have not been performed within the specified surveillance interval. The proposed revision would clarify TS 4.0.4 by adding the sentence: "This provision shall not prevent passage through or to OPERATIONAL CONDITIONS, as required to comply with ACTION requirements." The proposed revision to TS 4.0.3 would permit a delay of up to 24 hours in the applicability of the ACTION requirements, allow sufficient time for the completion of those SR that become applicable when an exception to TS 4.0.4 is allowed.

The proposed revision would incorporate slightly modified versions of the TS Bases 3.0 and 4.0 presented in GL 87-09. Also, to prevent operator confusion, the proposed revision would remove specific reference to the non-applicability of TS 3.0.4 from TS 3/4.3.1 (Reactor Trip System Instrumentation), TS 3/4.3.2 (Engineered Safety Features Actuation System Instrumentation), TS 3/4.3.3 (Monitoring Instrumentation), TS 3/4.4.10 (Structural Integrity), TS 3/4.7.9 (Sealed Source Contamination), TS 3/4.7.12 (Area Temperature Monitoring), TS 3/4.8.4 (Electrical Equipment Protective Devices), TS 3/4.9.7 (Crane Travel—Fuel Handling Building), TS 3/4.9.9 (Containment Ventilation Isolation System), TS 3/4.9.11 (Water Level—New and Spent Fuel Pools), TS 3/4.9.12 (Fuel Handling Building Emergency Exhaust System), TS 3/4.11.1 (Liquid Effluents), TS 3/4.11.2 (Gaseous Effluents), TS 3/4.11.3 (Solid Radioactive Wastes), TS 3/4.11.4 (Total Dose), TS 3/4.12.1 (Monitoring Program), TS 3/4.12.2 (Land Use Census), and TS 3/4.12.3 (Interlaboratory Comparison Program).

Basis for proposed no significant hazards consideration determination: As stated in 10 CFR 50.92, the Commission has provided guidelines and standards for determining whether a significant hazards consideration exists. According to 10 CFR 50.92(c), the Commission may make a final determination that a proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed changes in the plant Technical Specifications in accordance with the standards of 10 CFR 50.92(c) and has determined that operation of SHNPP in accordance with these changes would not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated.

The operational flexibility that would result from the proposed revision to TS 3.0.4 is consistent with that allowed by the existing individual LCO and their associated ACTION requirements, which provide an acceptable level of safety for continued operation.

A delay of up to 24 hours provided by TS 4.0.3 to permit the completion of a missed surveillance when the time allowed by the ACTION requirements is less than 24 hours reduces the probability of a transient occurring when the affected system or component is either out of service to allow performance of the surveillance test, or there is a lower level of confidence in the operability because the normal surveillance interval was exceeded.

The proposed revision to TS 4.0.4 makes it clear that TS 4.0.4 does not prevent passage through or to OPERATIONAL CONDITIONS as required to comply with ACTION requirements. The revisions of the TS Bases 3.0 and 4.0 and the elimination of specific exemptions to TS 3.0.4 are administrative in nature and, therefore, do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revisions result in improved Technical Specifications by removing (a) unnecessary restrictions on mode changes and facility operation, (b) unnecessary shutdowns caused by inadvertently exceeding surveillance intervals, and (c) conflicts within the Technical Specifications themselves.

The revisions to the TS Bases 3.0 and 4.0 and the elimination of specific exemptions to TS 3.0.4 are administrative in nature and, therefore, do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) involve a significant reduction in a margin of safety.

The operational flexibility that would result from the proposed revision to TS 3.0.4 is consistent with that allowed by the existing individual LCO and their associated ACTION requirements, which provide an acceptable level of safety for continued operation.

A delay of up to 24 hours provided by TS 4.0.3 to permit the completion of a missed surveillance, when the time allowed by the ACTION requirement is less than 24 hours, reduces the probability of a transient occurring when the affected system or component is either out of service to allow performance of the surveillance test, or there is a lower level of confidence in the operability because the normal surveillance interval was exceeded.

The proposed revision to TS 4.0.4 makes it clear that TS 4.0.4 does not prevent passage through or to OPERATIONAL CONDITIONS as required to comply with ACTION requirements. The revisions to the TS Bases 3.0 and 4.0 and the elimination of specific exemptions to TS 3.0.4 are administrative in nature and, therefore, do not involve a significant reduction in a margin of safety. These revisions would result in improved Technical Specifications and, therefore, would increase the margin of safety.

The NRC staff believes that the proposed changes to the Technical Specifications meet the criteria specified in 10 CFR 50.92(c) and, hence, proposes to determine that they involve no significant hazards considerations.

Local Public Document Room location: Richard B. Harrison Library, 1313 New Bern Avenue, Raleigh, North Carolina 27610.

Attorney for licensee: R.E. Jones, General Counsel, Carolina Power & Light Company, Raleigh, North Carolina 27602.

NRC Project Director: Elinor G. Adensam.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: November 3, 1988

Description of amendment request: The proposed amendments would change Technical Specification (TS) 4.7.8, SNUBBERS, to correct a typographical error. Specifically, the sentence in surveillance specification 4.7.8e.3) which begins "This plan be plotted . . . ." would be corrected to read "This can be plotted. . . ."

Also, TS Figure 3/4 7-1, "Nuclear Service Water System" (NSWS) would be replaced by a more legible figure, with full (rather than abbreviated) valve designation. The intent of the figure is to designate which lines and valves of the NSWS are shared between the two McGuire units. If a shared component of the NSWS becomes inoperable, both units are affected and both units must comply with the ACTION requirements of TS 3.7.4b, "Nuclear Service Water System." The proposed changes to Figure 3/4 7-1 make it clearer to plant operating personnel which NSWS components are shared between the two units. The revised line and valve designations do not make any change in existing system design, equipment, power source or plant operating practice.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazard exists by providing certain examples (51 FR 7744). One of the examples of actions involving no significant hazards considerations is example (i) "a purely administrative change to technical specifications; for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The requested changes to correct a typographical error and substitute an improved figure have as no safety implication, are purely administrative, and match this example. Accordingly, the Commission proposes to determine that the proposed amendment would involve no significant hazards considerations.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: David B. Matthews, Director.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 6, 1988.

Description of amendment request: The proposed amendment would change the Technical Specifications by deleting requirements for overcurrent protection on disconnected motor-operated-valve actuator compartment-heater breakers. from Table 3.8-1.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has performed an analysis of the safety significance of disconnecting compartment heaters to motor operated valves (MOV) and deleting the requirement to perform overcurrent protections testing on the circuits. The heaters play no functional role in Limitorque actuator operation. Because disconnecting compartment heaters does not change any MOV safety role, the probability and consequences of all accidents remains as before.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The MOV compartment heaters protect the internals from condensation during storage in uncontrolled atmospheres and for extended periods of no maintenance or inspection. Valves and their operators installed in various plant systems receive regular maintenance. Disconnecting in-service valve operator heaters eliminates a failure mode identified in Information Notice 86-71. Limitorque clearly states that the motor operator IEEE qualification tests were successful without using heaters.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Specification 3/4.8.4 intends to limit potential damage to conductors internal to electrical penetration assemblies. The role of the four penetration assemblies involved remain unchanged by disconnecting compartment heaters. The heater usefulness manifests only during valve storage. LCO 3.8.4.1 allows de-energized circuits instead of primary and backup overcurrent protection.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

We have reviewed the licensee's analysis and agree. Based on the above considerations, the staff proposes to determine that the amendment involve no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., N.W., Washington, D.C. 20037.

NRC Project Director: Jose A. Calvo.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 16, 1988

Description of amendment request: This proposed amendment would revise the Technical Specifications (ST) to (1) change the Safety Injection and Refueling Water Tank minimum temperature from 40°F to 50°F, (2) change the title of the Senior Vice President—Nuclear Operations, Production Operations, Production Engineering, and Quality and Environmental Affairs to Senior Vice President—Nuclear Operations, Production Engineering, and Quality and Environmental Affairs in order to reflect the current organizational structure, and (3) correct errors in references and a mailing address. Additionally, the proposed amendment would revise Facility Operating License DPR-40 to delete present paragraph 3.E, dealing with the Spent Fuel Pool Modification, since the modification is complete and the applicable Technical Specification requirements are in effect.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously

evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee addressed the above three standards in the amendment application.

With regard to the three standards concerning increase in the Safety Injection and Refueling Water Tank (SIRWT) minimum temperature, the licensee states that operation of the facility in accordance with this amendment would not:

(a) Involve a significant increase in the probability or consequences of an accident previously evaluated. The increase in minimum temperature is a conservative change. The change merely increases the minimum SIRWT temperature to match the tested values. No new accidents are created nor are the consequences of any existing accidents increased by this change because the change will result in a less severe pump thermal transient. This change is bounded by test data and current Technical Specification limitations. Therefore, this change does not increase the probability or consequences of a previously evaluated accident.

(b) Create the possibility of a new or different kind of accident from any accident previously evaluated. This change does not propose new or different modes of operation for the plant. The continued use of the same Technical Specification administrative controls prevents the possibility of a new or different kind of accident.

(c) Involve a significant reduction in a margin of safety. This change increases the minimum SIRWT temperature for pump thermal transient considerations in a conservative direction. Therefore, this change will not cause any reduction in the margin of safety.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing examples (51 FR 7751) of amendments that are considered not likely to involve significant hazards consideration. The proposed change to increase the minimum SIRWT temperature is an additional restriction to the allowable temperature range for the SIRWT and is, thus, similar to example (ii): "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement." The proposed changes to correct the titles in the organizational structure, to correct references, and delete the operating license condition in this amendment are similar to example (i): "A purely administrative change to technical specifications, for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature."

Accordingly, the staff proposes to determine that the proposed changes to the technical specifications and to the Facility Operating License do not involve a significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, N.W., Washington, D.C. 20036.

NRC Project Director: Jose A. Calvo.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: November 10, 1988

Description of amendment request: The licensee has provided, in part, the following description:

This application for amendment to the Indian Point 3 Technical Specifications seeks to replace the organization charts contained in Section 6.2 of Appendix A with more general organizational requirements. These general requirements, in accordance with Generic Letter 88-06 (GL 88-06), incorporate with one deviation those organizational features currently depicted on the charts that are important for ensuring that the plant will be operated safely. The one deviation taken from the requirements of GL 88-06 is the deletion of the requirement that the Operations Superintendent maintain a Senior Reactor Operator license.

The proposed changes include:

(1) Deletion of organization charts, figures 6.2-1 and 6.2-2.

(2) Deletion of references made to those figures from Technical Specification sections 6.1, 6.2, 6.3, and the List of Figures.

(3) Deletion of requirement that Operations Superintendent maintain a Senior Reactor Operator (SRO) license.

(4) Addition of general requirements to sections 6.2.1 and 6.2.2.

(5) Addition to Table of Contents.

Additionally, proposed changes not related to the subject generic letter include:

(1) Deletion of figure titles 2.1-2, 3.10-5, and 4.2-2 from the List of Figures.

(2) Addition of figure title 3.8-1 to the list of Figures.

These last two changes are editorial in nature. Figures 2.1-2 and 3.10-5 were deleted from the Technical Specifications by Amendment No. 48 to the Facility Operating License; Figure 4.2-2 was deleted by Amendment No. 57, and Figure 3.8-1 was added by Amendment No. 70. The changes to the List of Figures were inadvertently overlooked.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee made the following analysis of these changes:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because deletion of the organization charts from the Technical Specifications does not affect plant operation. As in the past, the NRC will continue to be informed of organizational changes through other required controls. The Code of Federal Regulations, Title 10, Part 50.34(b)(6)(i) requires that the licensee's organizational structure, responsibilities and authorities, and personnel qualification requirements be included in the Final Safety Analysis Report (FSAR). As required by 10 CFR 50.71(e), the Authority submits annual updates to the FSAR. Chapter 12 of the IP-3 FSAR provides a description of the organization, and organization charts to the same level of detail as currently exists in the Technical Specifications have been included via the 1988 IP-3 FSAR Update.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The proposed amendment does not create the possibility of a new or different kind of accident from that previously evaluated because the

proposed changes do not involve any physical alterations of plant configuration or changes to setpoints or operating parameters.

3. Does the proposed amendment involve significant reduction in a margin of safety?

Response: The proposed amendment does not involve a significant reduction in a margin of safety. Through the Authority's Quality Assurance program and its commitment to maintain only qualified personnel in positions of responsibility, it is assured that safety functions performed by the onsite and the corporate organizations will continue to be performed at a high level of competence. Based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra, Director.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: June 23, 1988

Description of amendment request: The proposed amendment would change surveillance requirements 4.1.3.4 and 4.1.3.5 to eliminate the requirement to verify shutdown rod and control bank rod positions within one hour after rod motion. Also, a footnote would be added to clarify that Surveillance Requirement 4.1.3.4a is applicable prior to withdrawing control banks in preparation for entering Mode 2 (Startup).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee proposes to correct an error in Surveillance Requirement 4.1.3.4 and 4.1.3.5 that requires shutdown rod positions and control bank rod positions be verified within one hour of rod motion. In addition, a footnote would be added to Technical Specification 3.1.3.4 clarifying that Surveillance Requirement 4.1.3.4a is applicable while in Mode 3 and preparing to enter Mode 2 withdrawal of the control banks.

The licensee has provided an analysis as follows:

The proposed changes to Technical Specifications 3/4.1.3.4 and 3/4.1.3.5 for both Salem 1 and 2 do not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. Verifying rod position and rod position indicators on a nominal basis of once per 12 hours with more frequent verification required if an automatic monitoring channel is inoperable is acceptable as per the basis of these Technical Specification Surveillance [SIC]. The bases state that the verification frequencies are adequate for assuring that the applicable LCO's are satisfied.

The change does not alter the use of the rod control system and operation of the plant would remain the same. The operation of the rods will still be consistent with present criteria which has been established and considered in the consequences of the accidents already evaluated.

(2) Create the possibility of a new or different kind of accident from an accident previously evaluated. The requested change does not alter the surveillances in any way which is outside the scope of the intent indicated in the bases of the Salem and Westinghouse Standard Technical Specification Surveillances. The revised surveillance will continue to assure that the applicable LCO's are satisfied and will be consistent with other Westinghouse designed plants. The operation of the rod control system will not change and therefore, no new or different kinds of accidents can be created.

(3) Involve a significant reduction in a margin of safety. The change in the surveillance requirement does not affect the operation of the rod control system in any way. The change only affects the frequency that the position of the rods are documented. Independent of the requirement for verification of rod position once every 12 hours, the operators have continuous display of rod positions. Since the proposed change does not affect the minimum surveillance frequency of 12 hours as supported in the bases, the change does not reduce the margin of safety.

We have reviewed the licensee's determinations and agree with them. Based on the above discussion, the staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Walter R. Butler.

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: October 24, 1988 (TS 258).

Description of amendment requests: The proposed amendments would change the expiration dates for the Operating License DPR-33 (Unit 1) from May 10, 2007 to December 20, 2013, for Operating License DPR-52 (Unit 2) from May 10, 2007 to June 28, 2014, and for Operating License DPR-68 (Unit 3) from July 31, 2008 to July 2, 2016.

The current operating license expiration dates are 40 years from the date of issuance of the construction permits (May 10, 1967 for Units 1 and 2 and July 31, 1968 for Unit 3). Because of the time required between the issuance of the construction permits and the full-power operating licenses the effective period for the operating licenses is approximately 33 years.

The licensee's application requests a 40 year operating license term from the date of issuance of initial operating license for all the three units because the units were designed and constructed on the basis of 40 years of plant operation. Although this does not mean that some components will not wear out during the plant lifetime, design features were incorporated which maximize the inspectability of structures, systems, and equipment. Surveillance and maintenance practices which have been implemented in accordance with the American Society of Mechanical Engineers Code and technical specifications provide assurance that any unexpected degradation in plant equipment will be identified and corrected.

The original design of the reactor pressure vessel (RPV) and associated internals considered the effects of 40 years of operation within the cyclic limits given in the Browns Ferry Final Safety Analysis Report (Section 4.2). Those cyclic limits equate to 40 years of operation at full power with a plant capacity factor of 80% (i.e., 32 effective full power years), including expected operational and thermal transients. In addition, the RVP stress analyses include appropriate consideration of thermal transient and fatigue effects which may be expected during the extended period of operation.

Aging analyses are being performed for all safety-related electrical equipment within the scope of 10 CFR 50.49, "Environmental Qualification of Electrical Equipment Important to Safety for Nuclear Power Plants." The qualified life of the equipment or component will be incorporated within Browns Ferry maintenance and replacement practices to ensure that the subject safety-related electrical equipment remains qualified and available to perform its intended safety function regardless of the overall age of the plant.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis.

1. The proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated. This change does not involve any changes to the design or operation of BFN. Therefore, no change will be made that could alter postulated scenarios regarding accident initiation or response. In addition this proposed amendment does not require any changes to the safety analysis. There are no modifications to the facility procedures or technical specifications. Existing surveillance, inspection, testing, and maintenance practices provide assurance that degradation in plant equipment, structures, or components will be identified and corrected as necessary throughout the life of the facility. The operation of BFN in accordance with the existing programs will ensure that plant operation will be bounded by the BFN Final Safety Analysis Report (FSAR) and Final Environmental Statement as amendment.

2. The proposed change does not create the possibility of a new or different kind of accident previously evaluated. This amendment does not involve any change to the physical structure or any of the components or systems of the plant. This proposed change is administrative in nature and does not exceed any of the analysis as evaluated in the BFN FSAR.

3. The proposed amendment does not involve a significant reduction in a margin of safety. There are no changes in the design, design basis, or operation of the facility. This change does not require any technical specification changes. Existing surveillance, inspection, testing and maintenance programs will provide assurance that degradation of equipment, structures or components will be identified and corrected throughout the lifetime of the facility. These practices will be maintained throughout the operating life of BFN and therefore assuring that there will not be any significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama, 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: December 6, 1988 (TS 88–26).

Description of amendment requests: The Tennessee Valley Authority (TVA) proposes to modify the Sequoyah Nuclear Plant (SQN) Units 1 and 2 Technical Specifications (TS). The changes are to add a footnote to limiting condition for operation (LCO) 3.4.2 for the reactor coolant system (RCS) safety valves for both units. The footnote would allow all three safety valves to be tested at the same time provided the valves are removed and the hole in the system is covered by a non-pressure-retaining membrane.

Basis for proposed no significant hazards consideration determination: TVA provided the following information on the proposed TS changes in its submittal:

LCO 3.4.2 requires at least one pressurizer code safety valve to be operable during modes 4 and 5 (shutdown conditions). The basis for this requirement ensures adequate relief capacity for any overpressure condition that could occur during shutdown. However, the actual wording of the LCO prevents full valve testing if all three valves are to be tested at the same time.

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

TVA has evaluated the proposed technical specification change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The intent of the LCO has not been changed. Pressure relief capabilities for overpressure protection still exist. The proposed change simply allows for more efficient testing techniques.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. No hardware changes or operating changes are being made. The valves will still be tested in accordance with ASME section XI.

(3) Involve a significant reduction in a margin of safety. The removal of all three safety valves at the same time does not reduce the pressure relief capabilities; thus, the margin of safety is not changed.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: December 6, 1988 (TS 88–29).

Description of amendment requests: The Tennessee Valley Authority (TVA) proposes to modify the Sequoyah Nuclear Plant Units 1 and 2 Technical Specifications (TS). The changes are to delete surveillance requirement (SR) 4.4.3.2.3 for the pressurizer power-operated relief valves (PORVs) and associated block valves. This SR demonstrates the operability of the emergency power supply for these valves.

Basis for proposed no significant hazards consideration determination: TVA provided the following information on the proposed TS change in its submittal:

The pressurizer PORVs have been changed from air-operated to solenoid operated valves in order to meet requirements of NUREG–0737. The PORVs are now permanently aligned to the 125-volt (V) direct current (dc) vital battery boards, which are the

emergency power supply. Therefore, no transfer is required to demonstrate operability of the emergency power supply.

The block valves are motor-operated valves (MOVs) powered from the 480-V reactor MOV boards, which are powered by the shutdown boards. The emergency power transfer is performed at the feed to the 6.9-kilovolt (kV) shutdown boards by transfer from offsite power to the diesel generators (DGs). Emergency power supply operability to the shutdown boards is accomplished by SR 4.8.1.1.2. Thus, the requirements for block valve operation provides no additional assurance of emergency power supply operability.

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration.

Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

TVA has evaluated the proposed technical specification change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The pressurizer PORVs are designed to limit pressurizer pressure and prevent the undesirable opening of the safety valves. The PORVs are also used for automatic and manual pressure control. The FSAR [Sequoyah Final Safety Analysis Report] analysis for overpressure protection assumes that the PORVs do not actuate. The steam generator safety valves and pressurizer safety valves provide the required pressure relief. However, the FSAR accident analysis for a steam generator tube rupture does rely on the PORVs for pressure reductions.

The intent of the subject SR for the PORVs and associated block valves is to demonstrate operability of the emergency power supply. Because power supply operability for these valves is included in other SRs with equal time interval requirements, no additional operability assurance is gained by this redundant testing. Existing SRs for the PORVs and block valves, along with the existing SRs for emergency power supplies, provide adequate assurance of valve capability to functionally control pressure. Thus, the proposed change does not affect the probability or consequences of an accident previously analyzed.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. The deletion of the subject SR does not require any hardware changes nor any change to the operating procedures. This change simply removes an unnecessary operator burden during performances of the DG test sequences and avoids any potential confusion about the intent of the requirement. Thus, the possibility of a new or different kind of accident is not created.

(3) Involve a significant reduction in a margin of safety. The intended design and operation of the PORVs and block valves have not been changed. Appropriate testing of the valves and power supplies still exists. Thus, the margin of safety has not been changed.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: December 16, 1988.

Brief description of amendment: The proposed amendment would revise Technical Specification 5.3.2 to allow the use of hafnium, silver-indium-cadmium (Ag-In-Cd), or a mixture of both types as the absorber material in rod cluster control assemblies (RCCA).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has provided the following analysis of no significant hazards considerations using the Commission's standards.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. This license amendment request will allow the use of Ag-In-Cd in RCCA's at Callaway Plant. These RCCA's will meet the same mechanical, nuclear, and thermal hydraulic limits as originally approved for hafnium RCCA's and described in FSAR Chapter 4.

The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated. As discussed above, RCCA's with Ag-In-Cd absorber material satisfies the same design limits as an original RCCA.

The proposed change does not involve a significant reduction in a margin of safety. As discussed above, the use of RCCA's with Ag-In-Cd absorber material will not result in an existing design limit being exceeded.

Based on the previous discussions, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; does not create the possibility of a new or different kind of accident from any accident previously evaluated; does not involve a reduction in the required margin of safety. The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The staff, therefore, proposes to determine that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC. 20037.

NRC Project Director: John N. Hannon.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: November 30, 1988.

Description of amendment request: Amendment would revise the fuel cladding integrity safety limit (FCISL) in the Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no signfiicant hazards

considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or possibility of a new or different kind of accident from any accident previously evaluated; or (2) involve a significant reduction in a margin of safety.

The licensee's analyses contained in the November 30, 1988 letter states the following:

Three standards defined in 10 CFR 50.92 are used to arrive at a determination that this request for amendment involves no significant hazards considerations. The discussion below addresses these three standards and demonstrates that operating the facility in accordance with this proposed change involves no significant hazards considerations.

1. The proposed changes will not involve any significant increase in the probability or consequences of an accident previously evaluated. No changes are being made to the facility or its equipment so there is no increase of the probability of any previously analyzed event.

For the P8X8R, BP8X8R, GE8X8E, or GE8X8EB with R factors [greater than] 1.04, the 1.04 FCISL provides the same degree of assurance for fuel cladding integrity during an abnormal event as the 1.07 FCISL does for all other core loadings (See NRC SER of December 27, 1987). Since Vermont Yankee uses and will install these GE fuel types in future reloads, the use of the 1.04 FCISL does not increase the consequences of any event previously analyzed.

2. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated since the facility is not being changed.

3. The proposed change will not involve a significant reduction in the margin of safety. The use of 1.04 as the minimum critical power ratio FCISL reflects the utilization of current GE fuel designs and does provide the same margin of safety as 1.07 does with the older GE fuel types as discussed in the SER included with the NRC letter to General Electric Company, dated December 27, 1987.

The staff has reviewed the licensee's analysis and agrees with it. Therefore, we conclude that the amendment satisfies the three criteria listed in 10 CFR 50.92. Based on that conclusion, the staff proposes to make a no significant hazards consideration determination.

Local Public Document Room Location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for licensee: John A. Ritscher, Esq., Ropes & Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Richard H. Wessman, Director.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of amendment request: December 6, 1988.

Description of amendment request: The proposed amendment would revise Technical Specification requirements for the Control Room Emergency Filtration System and its associated actuation instrumentation to reflect the control room configuration for two-unit operation.

Date of publication of individual notice in **Federal Register**: December 16, 1988 (53 FR 50606).

Expiration date of individual notice: January 17, 1989.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of amendment request: December 6, 1988.

Description of amendment request: The proposed amendment revise Technical Specification sections which would require that diesel generator voltage be within a specified range during surveillance testing.

Date of publication of individual notice in **Federal Register**: December 15, 1988 (53 FR 50480).

Expiration date of individual notice: January 17, 1989.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of amendment request: December 12, 1988.

Description of amendment request: The proposed amendment would replace the Unit 1 Technical Specifications with combined Technical Specifications for Units 1 and 2.

Date of publication of individual notice in **Federal Register**: December 27, 1988 (53 FR 52266)

Expiration date of individual notice: January 26, 1989.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: October 26, 1988.

Brief description of amendment request: The proposed amendment would revise the spent fuel storage capacity limitation presently stated in the Technical Specifications (TSs), Design Features Section 5.6.3. to read, "The spent fuel storage pool shall be limited to a storage capacity of no more than 1290 fuel assemblies."

Date of publication of individual notice in **Federal Register**: December 12, 1988 (53 FR 49945)

Expiration date of individual notice: January 11, 1989.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The

Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22 Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

Arkansas Power & Light Company, Docket No. 50-313, Arkansas Nuclear One, Unit 1, Pope County, Arkansas

Date of amendment request: July 20, 1988

Brief description of amendment: The amendment revised the Technical Specifications to specifically provide for a 1 gallon per minute limit on primary-to-secondary leak rate (total steam generator tube leakage).

Date of issuance: December 15, 1988.

Effective date: December 15, 1988.

Amendment No.: 115.

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 7, 1988 (53 FR 34601). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 15, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: June 16, 1988, as supplemented on November 29, 1988.

Brief description of amendments: The proposed Technical Specification (TS) amendments added the definition, "Refueling Interval—At least once per 24 months," to Table 1.2 of the Units 1 and 2 TS Definition 1.22, "Frequency Notation."

Date of issuance: December 21, 1988.

Effective date: December 21, 1988.

Amendment Nos.: 133 and 114.

Facility Operating License Nos. DPR-53 and DPR-69. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 19, 1988 (53 FR 40982). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 21, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Carolina Power & Light Company, et al., Docket No. 50-325, Brunswick Steam Electric Plant, Unit 1, Brunswick County, North Carolina

Date of application for amendment: June 27, 1988.

Brief description of amendment: The amendment changes the Technical Specifications (TS) Tables 3.3.5.6-1, 3.3.5.6-2 and 4.3.5.6-1 to replace instrument tag number TS-CR-863 with TS-CIT-863-3. The change reflects an upgrading of instrumentation during a planned plant modification.

Date of issuance: December 20, 1988.

Effective date: December 20, 1988.

Amendment No.: 120.

Facility Operating License No. DPR-71: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46139). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 20, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Carolina Power & Light Company, et al., Docket No. 50-325, Brunswick Steam Electric Plant, Unit 1, Brunswick County, North Carolina

Date of application for amendment: June 9, 1988.

Brief description of amendment: The amendment revises Technical Specification (TS) Tables 3.3.5.2-1 and 4.3.5.2-1 to reflect changed equipment numbers to comply with 10 CFR Part 50, Appendix R, Section III.G, Alternative Shutdown Capabilities.

Date of issuance: December 20, 1988.

Effective date: December 20, 1988.

Amendment No.: 121.

Facility Operating License No. DPR-71: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46138). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 20, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Commonwealth Edison Company, Docket Nos. 50-456 and 50-457, Braidwood Station, Units 1 and 2, Ogle County, Illinois

Date of application for amendments: November 26, 1986 and January 14, 1988.

Brief description of amendments: These amendments modified paragraph 2.F of License Nos. NPF-72 and NPF-77 to require compliance with the revised Physical Security Plan. This plan was updated to conform to the latest requirements of 10 CFR 73.55. Consistent with the provision of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

Date of issuance: December 19, 1988.

Effective date: December 19, 1988.

Amendment Nos.: 13, 13.

Facility Operating License Nos. NPF-72 and NPF-77. The amendments revised the Technical Specification.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46139) and a Safeguards Evaluation Report dated December 19, 1988. The

Commission's related evaluation of the amendments is contained in a letter to Commonwealth Edison Company dated December 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County Connecticut; and Northeast Nuclear Energy Company, et al., Docket Nos. 50-245 and 50-336, Millstone Nuclear Power Station, Unit Nos. 1 and 2, New London County, Connecticut

Date of application for amendments: February 17, 1988.

Brief description of amendments: The Technical Specification changes concern the requirements for the minimum shift crew composition to recognize the acceptability of the use of qualified individuals in the dual-role of senior reactor operator/shift technical advisor position.

Date of issuance: December 19, 1988.

Effective date: December 19, 1988.

Amendment Nos.: 110, 27, 136.

Facility Operating License Nos. DPR-61, DPR-21 and DPR-65. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 7, 1988 (53 FR 34602). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut and Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: October 7, 1988.

Brief description of amendments: The amendments modified Section 6.2, "Organization" of the Technical Specifications to delete the offsite and onsite organization charts.

Date of issuance: December 20, 1988.

Effective date: December 20, 1988.

Amendment Nos.: 56 and 49.

Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 16, 1988 (53 FR 46143). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 20, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, et al., Docket No. 50-414, Catawba Nuclear Station, Unit 2, York County, South Carolina

Date of application for amendment: September 14, 1988.

Brief description of amendment: The amendment revised license condition 2.C.(8)(b) to allow an extension of time for resolution of the Safety Parameter Display System issue.

Date of issuance: December 28, 1988.

Effective date: December 28, 1988.

Amendment No.: 50.

Facility Operating License Nos. NPF-52. Amendment revised the Operating License.

Date of initial notice in **Federal Register**: October 19, 1988 (53 FR 40984). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 28, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of application for amendment: October 24, 1988, and supplemented by letter dated November 3, 1988.

Brief description of amendment: The amendment revises the schedules of a number of 18-month surveillances to permit performance of these surveillances to be postponed to the first refueling outage.

Date of issuance: December 19, 1988.

Effective date: December 19, 1988.

Amendment No.: 10.

Facility Operating License No. NPF-73. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 16, 1988 (53 FR 46144). The November 3, 1988 submittal provided additional clarifying information and did not change the determination of the initial notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Duquesne Light Company, Docket No. 50-334 and 50-412, Beaver Valley Power Station, Unit No. 1 and 2, Shippingport, Pennsylvania.

Date of application for amendment: January 27, 1988 and revised by letter dated July 26, 1988.

Brief description of amendment: The amendments clarify several action statements regarding reactor trip breakers in Table 3.3-1 of the Technical Specifications of each unit.

Date of issuance: December 19, 1988.

Effective date: December 19, 1988.

Amendment No.: 134 for Unit 1, 11 for Unit 2.

Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 7, 1988 (53 FR 34603). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida.

Date of application for amendments: June 23, 1988.

Brief description of amendments: The amendments changed Technical Specification 4.6.1.2, "Containment Leakage" by deleting the reference to ANSI/ANS Standard N45.4-1972. This change allows for use of the "mass point" method, which is described in ANSI/ANS Standard 56.8-1981 (revised 1987), for determination of containment leakage rates.

Date of Issuance: December 19, 1988.

Effective Date: December 19, 1988.

Amendment Nos.: 99 and 37.

Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 10, 1988 (53 FR 30132). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia, Avenue, Ft. Pierce, Florida 33450.

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida.

Date of application for amendment: October 20, 1988, as supplemented November 21, 1988.

Brief description of amendment: The amendment changed the control element assembly maximum drop time from 2.7 seconds to 3.1 seconds.

Date of Issuance: December 19, 1988.

Effective Date: December 19, 1988.

Amendment No.: 38.

Facility Operating License No. NPF-16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46144). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 19, 1988. The November 21, 1988 letter provided supplemental information which did not alter the staff's initial determination of no significant hazards consideration.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida.

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: September 23, 1988.

Description of amendment request: The proposed revision will change the number of gallons of fuel oil specified for the Division II diesel generator (1B).

Date of issuance: December 19, 1988.

Effective date: December 19, 1988.

Amendment No.: 13.

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46146). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 19, 1988.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: October 30, 1987.

Description of amendment request: The proposed change will correct typographical errors and clarify existing requirements.

Date of issuance: December 21, 1988.

Effective date: December 21, 1988.

Amendment No.: 14.

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 27, 1988 (53 FR 2319). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 21, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: October 30, 1987.

Description of amendment request: The proposed change will correct typographical errors.

Date of issuance: December 29, 1988.

Effective date: December 29, 1988.

Amendment No.: 15.

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 27, 1988 (53 FR 2319). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 29, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

NRC Project Director: Daniel R. Muller

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: October 30, 1987.

Description of amendment request: The proposed change will clarify part "a" and "b" of Action 70 for Technical Specification Table 3.3.7.1-1.

Date of issuance: December 29, 1988.

Effective date: December 29, 1988.

Amendment No.: 16.

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 27, 1988 (53 FR 2318). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 29, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Long Island Lighting Company, Docket No. 50-322, Shoreham Nuclear Power Station, Suffolk County, New York

Date of application for amendment: October 14, 1987.

Brief description of amendment: This amendment changed the operating license and the Technical Specifications to correct a typographical error in Operating License NPF-36 on page 6, subparagraph (8), to make the reference to 10 CFR 50.59 read 10 CFR 50.49, correct a valve designation, and correct a report title.

Date of issuance: December 16, 1988.

Effective date: December 16, 1988.

Amendment No.: 11.

Facility Operating License No. NPF-36. This amendment revised the Technical Specifications and License.

Date of initial notice in **Federal Register:** December 2, 1987 (52 FR 45888). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 16, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786-9697.

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: October 19, 1988, as supplemented October 31, 1988, November 11, 1988 and December 7, 1988.

Brief description of amendment: The amendment adds a license condition authorizing the sale and leaseback by System Energy Resources, Inc. of a portion of its 90 percent ownership interest in Grand Gulf Nuclear Station, Unit 1.

Date of issuance: December 19, 1988.

Effective date: December 19, 1988.

Amendment No.: 54.

Facility Operating License No. NPF-29. This amendment revises the License.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46148). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: September 20, 1988.

Brief description of amendment: The change modified the Technical Specifications (TS) as follows: (1) the maximum linear heat rate shown in TS Figure 3.2.1 was reduced from 15.6 to 14.0 Kw/ft, and (2) a factor of 1.115 was applied to the total planar radial peaking factor for reactor operation during Cycle 9 beyond a core average burnup of 10,000 MWD/MTU.

Date of issuance: December 19, 1988.

Effective date: December 19, 1988.

Amendment No.: 137.

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 2, 1988 (53 FR 44254). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: October 5, 1988.

Brief description of amendment: The amendment changes Technical Specification (TS) 3/4.1.1.3, "Moderator Temperature Coefficient," to allow a more negative moderator temperature coefficient in the Limiting Condition for Operation, TS 3.1.1.3b, and in the associated Surveillance Requirement, TS 4.1.1.3b.

Date of issuance: December 20, 1988.

Effective date: December 20, 1988.

Amendment No.: 29.

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46149). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 20, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 2, 1986, as supplemented January 9, and September 30, 1988.

Brief description of amendment: This amendment revises paragraph 3.C of the license to require compliance with the amended Physical Security Plan. This plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

Date of issuance: December 20, 1988.

Effective date: December 20, 1988.

Amendment No.: 118.

Facility Operating License No. DPR-40. Amendment revised the License.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46149). The Commission's related evaluation of the amendment is contained in a Safeguards Evaluation Report dated December 20, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of application for amendments: November 10, 1988.

Brief description of amendments: The amendments authorize, for Unit 1 only, an exception to the requirements of Technical Specification 4.3.1.1, Table 4.3-1, Item 23, "Seismic Trip," until the next refueling outage (currently scheduled for October 1989).

Date of issuance: December 29, 1988.

Effective date: December 29, 1988.

Amendment Nos.: 33 and 32.

Facility Operating License Nos. DPR-80 and DPR-82: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** November 28, 1988 (53 FR 47886). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 29, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: September 7, 1988.

Brief description of amendments: These amendments reflect a modification to the diesel generator building carbon dioxide fire protection system (CARDOX) correcting design deficiencies by replacing the current CARDOX system controls and heat detectors with seismically qualified, safety related components.

Date of issuance: December 28, 1988.

Effective date: December 28, 1988.

Amendment Nos.: 137 and 139.

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 19, 1988 (53 FR 40994). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 28, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: October 13, 1988.

Brief description of amendment: The amendment modified the time allowed to recalibrate the linear power channels following a power reduction. It also makes a minor editorial correction.

Date of issuance: December 23, 1988.

Effective date: December 23, 1988.

Amendment No.: 66.

Facility Operating License No. DPR-34. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46154). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 23, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: October 14, 1988.

Brief description of amendment: The amendment required testing of the PCRV overpressure protection system in accordance with the ASME Code, Section XI.

Date of issuance: December 23, 1988.

Effective date: December 23, 1988.

Amendment No.: 67.

Facility Operating License No. DPR-34. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46156). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 23, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: September 19, 1988, as supplemented November 4, 1988.

Brief description of amendment: This amendment deletes the requirement to perform local leak rate tests (LLRT) on the decay heat removal and high pressure injection containment penetrations. The amendment also changes the surveillance period for the remaining LLRT.

Date of issuance: December 21, 1988.

Effective date: December 21, 1988.

Amendment No.: 101.

Facility Operating License No. DPR-54: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46159). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 21, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822.

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: August 3, 1988 (TS 247)

Brief description of amendments: The proposed amendments would modify Sections 3.11 and 4.11 of the current Browns Ferry Nuclear Plant (BFN) Units 1, 2, and 3 Technical Specifications (TS). This change would align BFN activities to current industry fire protection practices and standards.

The TS are being revised to delete ambiguities and to clarify fire protection systems Limiting Conditions for Operation (LCO) and Surveillance Requirements (SR). The LCOs have been added to improve and clarify operability requirements. The SRs are being added to provide clearer and better defined SRs to verify system operability.

Date of issuance: December 27, 1988.

Effective date: December 27, 1988, and shall be implemented within 60 days.

Amendments Nos.: 162, 159, 133.

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 21, 1988 (53 FR 36674). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 27, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Toledo Edison Company and the Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: April 22, 1985, supplemented July 31, 1986.

Brief description of amendment: The amendment revised the Technical Specifications to delete the isolation times specified in Table 3.6-2 for certain containment isolation valves. The amendment also corrected typographical errors relating to three valves and deleted redundant listings for two valves.

Date of issuance: December 27, 1988.

Effective date: December 27, 1988.

Amendment No.: 127.

Facility Operating License No. NPF-3. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 5, 1986 (51 FR 40282). The Commission's related evaluation of the amendment is contained in a letter dated December 27, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 3rd day of January, 1989.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-442 Filed 1-10-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-15283; License No. 35-19048-01; EA 88-155]

Bill Miller, Inc. Henryetta, OK, Order Imposing Civil Monetary Penalty

I

Bill Miller, Inc., Henryetta, Oklahoma (the licensee) is the holder of Materials License No. 35-19048-01 issued by the Nuclear Regulatory Commission (NRC/Commission) on June 25, 1979, and amended last in its entirety on March 13, 1986. The license authorizes the licensee to perform industrial radiography.

II

Inspections of the licensee's activities were conducted on February 27, and May 11, 1988. The results of these inspections indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated September 13, 1988. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for certain of the violations. The licensee responded to the Notice by two letters dated October 11, and November 18, 1988.

In its response, the licensee did not contest the violations for which a civil penalty was proposed. However, the licensee did request that the proposed civil penalty be mitigated due to financial hardship. By letter dated November 9, 1988, the NRC provided the licensee with the opportunity to submit specific financial information on the

company's recent profits and losses and its net worth. The licensee submitted this information by letter dated November 18, 1988.

III

After consideration of the licensee's response and the statement of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined as set forth in the Appendix to this Order that the violations for which a civil penalty was proposed occurred as stated, but that the civil penalty proposed in the Notice of Violation would constitute an excessive financial hardship for the licensee, and therefore should be mitigated by 50 percent.

IV

In view of the foregoing and pursuant to section 81, 161b, 182, and 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Four Thousand Dollars ($4,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. In the alternative, the civil penalty may be paid in 24 monthly installments which would include accrued interest. The licensee is to inform the Director, Office of Enforcement, within the 30 day period if it elects this alternative.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. A copy of the hearing request shall also be sent to the Assistant General Counsel for Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555, and to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of Section IV of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be: whether, on the basis of the admitted violations, this Order should be sustained.

Dated at Rockville, Maryland this 3 day of January 1989.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Appendix—Evaluations and Conclusions

On September 13, 1988, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued to Bill Miller Inc. (licensee) for violations identified during an NRC inspection. A civil penalty was proposed for certain of the violations identified. The licensee responded to the Notice by a letter dated October 11, 1988, and claimed that the proposed penalty would impose a financial hardship on the company. The licensee also provided statements of corporate financial status by letter dated November 18, 1988 to support its argument that the proposed civil penalty be mitigated because of financial hardship. The NRC's evaluation and conclusion regarding the licensee's arguments are as follows:

I. Violations Assessed a Civil Penalty

A. By License Condition 16, the licensee is required to follow procedures submitted with the license application. The licensee's Operating and Emergency Procedures Manual submitted with the license application dated September 13, 1985 requires, in Section III, Part 8.1.5, that direct surveillance of the area where a source is to be exposed must be conducted by the radiographer or his assistant in order to keep all personnel out of the area while the source is exposed.

Contrary to the above, surveillance by the licensee's radiographer and his assistant at the area in which industrial radiography was to be performed at the Wynnewood Refinery on February 25, 1988 was insufficient in that two individuals were in the area when the source was exposed.

B. 10 CFR 34.42 requires that areas in which radiography is being performed shall be conspicuously posted as required by 10 CFR 20.203(b) and (c)(1).

10 CFR 20.203(b) requires that each radiation area shall be conspicuously posted with a sign or signs bearing the radiation caution symbol and the words "CAUTION HIGH RADIATION AREA."

10 CFR 20.203(c)(1) requires that each high radiation area shall be conspicuously posted with a sign or signs bearing the radiation caution symbol and the words "CAUTION RADIATION AREA."

Contrary to the above, at the Wynnewood Refinery on February 25, 1988, the licensee radiographer and assistant radiographer did not post the radiation area and the high radiation area in which industrial radiography was being performed.

C. 10 CFR 20.105(b) requires that no licensee shall possess, use, or transfer licensed material in such a manner as to create in any unrestricted area radiation levels which, if an individual were continuously present in the area, could result in the individual receiving a dose in excess of 2 milllirems in any 1 hour. 10 CFR 20.3 defines an unrestricted area as any area access to which is not controlled by the licensee for purposes of protection of individuals from exposure to radiation.

License Condition 16 requires that the licensee shall conduct its program in accordance with the statements, representations, and procedures submitted with the license application dated September 13, 1985, and the letter dated December 4, 1985. Section III, Part 8.1.2 of the licensee's Operating and Emergency Procedures Manual, submitted with the license application, requires the radiographer to rope off the boundaries of the area in which it has been calculated that the radiation levels would be 2mR/hr or greater.

Contrary to the above at the Wynnewood Refinery, on February 25, 1988, the licensee's radiographer used licensed material in such manner that two individuals who were present in an unrestricted area could have received between 200 and 450 millirems for the 14 seconds that the source was exposed, based on measurements and calculations made by the NRC inspector via the reenactment of the incident. The area was deemed to be unrestricted in that the radiographer and assistant radiographer did not rope off the area in which industrial radiography was being performed to establish a boundary within which the radiation level would be 2 mR/hr or greater.

Collectively the above violations have been categorized in the aggregate as a Severity Level II problem (Supplements IV and VI).

Summary of Licensee Response-

The licensee, in its response, does not deny any of the violations for which a civil penalty was proposed. However, the licensee does request mitigation of the civil penalty based on the severe

economic burden the cilil penalty would place on Bill Miller, Inc.

NRC Evaluation of Licensee's Request for Mitigation

The NRC Enforcement Policy recognizes that a licensee's ability to pay is a proper consideration in determining the amount of a civil penalty. The licensee's financial information submitted in its November 18, 1988 letter demonstrates that imposition of a civil penalty in the amount proposed would create a severe financial burden. Recognizing the current financial situation, the penalty is being reduced by 50 percent. The NRC also finds, consistent with its Enforcement Policy, that the imposition of the reduced civil penalty will not result in economic termination of the licensee's business or financial hindrance of the licensee's ability to safely conduct licensed activities.

NRC Conclusion

The NRC staff has carefully reviewed the licensee's response and the financial information submitted by the licensee, and has concluded that, in light of the licensee's financial situation, the proposed civil penalty should be mitigated by 50 percent to $4,000.

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[Docket No. 50-382; EA 88-144]

Louisiana Power & Light Co., Waterford Steam Electric Station, Unit 3 License No. NPF-38; Order Imposing Civil Monetary Penalty

I

Louisiana Power & Light Co. (licensee) is the holder of Operating License No. NPF-38 issued by the Nuclear Regulatory Commission (NRC/Commission) on March 16, 1985. The license authorizes the licensee to operate the Waterford Steam Electric Station, Unit 3 in accordance with the conditions specified therein.

II

A special inspection of the licensee's activities was conducted during May 12-20, 1988. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated August 18, 1988. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated October 14, 1988. In that response the licensee denied Violation A, admitted Violation B but disputed two statements in the violation, and requested a withdrawal of the proposed civil penalty.

III

After consideration of the licensee's response and the statements of fact, explanation, and arguments for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined as set forth in the Appendix to this Order that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars ($50,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, and a copy to the NRC Resident Inspector at Waterford 3.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above and

(b) Whether, on the basis of such violations, this Order should be sustained.

For The Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Dated at Rockville, Maryland, this 3rd day of January, 1989.

Appendix—Evaluations and Conclusions

On August 18, 1988, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection in May 1988. Louisiana Power and Light Company responded to the Notice on October 14, 1988. The licensee denied Violation A, admitted Violation B but disputed two statements in the violation, and requested a withdrawal of the proposed civil penalty. The NRC's evaluation and conclusions regarding the licensee's arguments are as follows:

Restatement of Violation A

Violation A

A. *Inadequate corrective actions.* criterion XVI of Appendix B to 10 CFR Part 50, requires, in part, that for significant conditions adverse to quality, measures shall be established to assure that the cause of the condition is determined and corrective action is taken to preclude repetition.

In Juy 1986, a loss of both shutdown cooling pumps occurred at Waterford 3, an event constituting a "significant condition adverse to quality." The licensee's measures established to preclude repetition of this event included specific commitments made in a September 21, 1987, response to Generic Letter 87-12, "Loss of Residual Heat Removal (RHR) While the Reactor Coolant System is Partially Filled." These measures as set forth in the September 21, 1987, response, included:

1. During part-loop operations, operators will utilize two independent and diverse RCS level measurement systems—the heated junction thermocouple (HJTC) system and the refueling level indication system (RLIS), and that the HJTC system level indication shall be monitored continuously while draining, and frequently while the RCS is partially drained.

2. "* * * when the reactor vessel head is not in place (or when preparing for head removal or replacement) the RCS water level is maintained several

feet above the hot leg centerline. This precludes the possibility of losing SDC [shutdown cooling] flow due to vortexing."

3. "During installation, the tubing length of the RLIS was maintained to a minimum."

Contrary to the above, the licensee failed to take adequate corrective actions to preclude repetition of a significant condition adverse to quality in that, on May 12, 1988, at approximately 6:15 a.m. and again at 9:35 a.m., inaccurate reactor vessel water level indication resulted in vortexing, cavitation, and subsequent loss of the operational shutdown cooling pump. These events are repetitious of the occurrence in July 1986 (reported in LER 86-15) where a series of events, including inaccurate water level indication resulting from improper installation and care of the tygon tube instrument, resulted in vortexing, cavitation, and loss of both shutdown cooling pumps. The licensee's measures to prevent a recurrence of that condition, including the licensee's commitments in response to Generic Letter 87-12, were not fully implemented on May 12, 1988, in that the two independent means of level indication (HJTC and RLIS) were not both used when draining during part-loop operation, the RCS water level was not maintained several feet above the hot leg centerline when the reactor vessel head was not in place, and the RLIS tubing length was not maintained to a minimum when installed. Therefore, the measures were not adequate to prevent a similar condition from occurring.

Summary of Licensee's Response to Violation A

The licensee contests Violation A, as written, on the basis of the following arguments:

1. The May 1988 event is not a repetition of the July 1986 event.
2. Commitments made by Waterford 3 in response to Generic letter 87-12 are not a continuation of the corrective action for the July 1986 event.
3. The Generic Letter 87-12 commitments cited in Violation A were not commitments made by LP&L to the NRC.

The summary details of these three arguments are presented in the following paragraphs.

A. The May 1988 event is not a repetition of the July 1986 event

The licensee agrees with the NRC that the July 1986 extended loss of shutdown cooling event constituted a significant condition adverse to quality. In that event, two separate drain paths were being used to lower RCS level. Because the drain down rate was too high, the resulting vacuum in the RCS collapsed the RLIS tygon tube causing an inaccurate level indication (actual level was lower than indicated). Recognizing a problem with the level measurement, operators isolated one of the drain paths, overlooking the other. Operators began venting the RCS, and upon completion of the venting process, the RLIS indicated level fell to 9 feet (well below the hot leg). Since past local level indicators were suspect, and since the B LPSI pump was operating satisfactorily, operations personnel felt the RLIS indication of 9 feet was inaccurate. Shutdown cooling was lost when the operating shutdown cooling pump began to cavitate due to loss of pump suction because of the continued draindown from the other drain path. Shutdown cooling was lost for approximately 220 minutes (RCS hot leg temperature increased from 138 °F to 232 °F).

By contrast, LP&L characterizes the May 1988 event as brief cavitation of a low pressure safety injection (LPSI) pump which did not result in a loss of shutdown cooling due to correct operator actions and procedures. The licensee does acknowledge that certain design control and procedural implementation errors associated with the installation and operation of the newly installed RWLIS did occur. The licensee summarizes these errors as: (1) the failure to recognize the significance of RLIS design changes which allowed excess RLIS tubing and subsequent air entrainment; and (2) the failure to coordinate procedure changes (RCS drain down) with construction completion to ensure RWLIS/RLIS were properly placed in service.

Because the July 1986 event resulted in an extended loss of shutdown cooling and the May 1988 event resulted in only LPSI pump cavitations, the licensee argues that the May 1988 event was not a repetition of the July 1986 event. LP&L argues that similarity of events does not constitute repetition.

B. Commitments made in response to Generic Letter 87-12 are not a continuation of corrective action for the July 1986 event

The licensee argues that the corrective actions for the July 1986 event stand on their own, and that "commitments to Generic Letter 87-12 are immaterial because such commitments are not a continuation of corrective action from the July, 1986 event."

C. LP&L did not make, and fail to implement, the commitments as cited in the NOV

LP&L argues that the three Generic Letter 87-12 response statements cited in Violation A were not commitments. LP&L states that the Generic Letter 87-12 response was not intended to provide exhaustive detail for procedural steps, nor discuss all potential situations to which procedures could apply. As a result, LP&L states that there was never the intent or belief that a summary description could logically constitute a commitment.

With respect to the first response statement cited in Violation A, the licensee maintains that the company's Generic Letter 87-12 response generally summarizes some elements of applicable Waterford 3 procedures that existed at the time its response was written. However, it could not be construed as a commitment because to do so would preclude the licensee from ever using the improved RWLIS system. Additionally, LP&L states that because the Generic Letter 87-12 response statement, that the HJTC system shall be continuously monitored while draining and frequently while the RCS is partially drained, is only a summary description of then extant procedures, it does not cover all possible instances of applicabilty (i.e., there could be instances in which the HJTC would not be available for use during part-loop operations).

LP&L asserts that a similar argument can be made for the second Generic Letter 87-12 response statement cited in Violation A that the water level will be maintained above the hot leg centerline.

For the third response statement cited in Violation A, LP&L agrees that a deficiency existed in not identifying the excess RLIS tube as a potential cause of inaccurate level measurement. However, the licensee believes that this deficiency is adequately covered as a procedure violation in Violation B.

NRC Evaluation of Licensee's Response to Violation A

A. The NRC staff disagrees with the licensee's fundamental assertion that the dissimilarities between the 1986 and 1988 events preclude characterizing the 1988 events as a repetition of the 1986 event. The licensee appears to be focusing narrowly on the specific circumstances of each and, by doing so is overlooking the important elements that are common to each. The staff's evaluation of both the May 1988 event and the licensee's response to Violation A reveals that the May 1988 event was

sufficiently repetitious of the most important elements of the July 1986 event. In both events, a loss of reactor vessel control resulted in LPSI pump cavitation due to vortexing. The only difference was in the manner in which level control was lost. Although level control was lost by different means, operator error, inadequate procedures, and lack of sufficient training contributed to the loss of level control in both instances.

In response to Violation A, LP&L notes that following the cavitation of the A LPSI pump during the May 1988 event, the B LPSI pump was vented and started with no problems occurring. LP&L fails to indicate, however that prior to starting the B LPSI pump, RCS level was restored to above the common suction point for both the A and B LPSI pumps by using the A high pressure safety injection (HPSI) pump. During the 20 minutes that transpired between stopping the A LPSI pump, restoring level with the A HPSI pump, and starting the B LPSI pump, RCS level was low enough that cavitation of the B LPSI pump could have been expected to have occurred if the operators had attempted to start the B LPSI pump prior to restoring RCS level with the A HPSI pump.

The NRC staff acknowledges that prompt operator action to start the A HPSI pump to restore level prevented a sustained loss of shutdown cooling. This procedural guidance to restore level with an HPSI pump was developed as a result of both the July 1986 event and Generic Letter 87-12. However, the NRC staff's concern is that a sustained loss of shutdown cooling was avoided, not because adequate preventive measures had been developed and were taken, but rather because sufficient mitigative measures were taken. The NRC staff concludes that had LP&L developed and properly implemented adequate preventive measures such as establishment and verification of adequate level indication, the licensee would not have had to rely on operators properly implementing actions for an off-normal event. Had the May 1988 event actually resulted in a sustained loss of shutdown cooling for a similar duration as the July 1986 event, NRC staff would have considered this is a more serious violation and an increase in the Severity Level of the violation would have been appropriate.

B. The NRC staff notes that the only element of proof necessary to establish a violation under Criteria XVI of Appendix B to 10 CFR Part 50 is to demonstrate that adequate corrective action has not been taken to preclude repetition of earlier known conditions adverse to quality. A violation for the May 1988 event was thus established by the fact that this event occurred following the July 1986 event which has previously been shown to be similar. In the instant matter, the NRC staff went even further than was necessary and also demonstrated that the licensee had not complied with the corrective actions listed in its response to Generic Letter 87-12 which the NRC staff concluded were in part taken to remedy causes of the July 1986 event.

The NRC staff disagrees with the licensee's conclusions that the corrective actions for the July 1986 event stand on their own and that the response to Generic Letter 87-12 is independent of the July 1986 event corrective actions. The intent of the July 1986 corrective action was to preclude a loss of shutdown cooling capability during part-loop operations. Actions resulting from Generic Letter 87-12 had the same purpose. Since the licensee's Generic Letter 87-12 task force concluded among other things, that improvements to procedures were needed to further reduce the chances of experiencing another sustained loss of shutdown cooling event, it must be concluded that the licensee understood that the July 1986 event corrective actions were not sufficient in scope to accomplish this. A review of the licensee's response to Generic Letter 87-12 reinforces this conclusion. As noted in LP&L's response, "* * * the scope of the [Generic Letter 87-12] task force review encompassed not only Generic Letter 87-12, but also previous NRC and industry critiques of applicable loss of shutdown cooling events including the July 1986 loss of shutdown cooling event at Waterford 3. Although reviews of such events had been conducted (improvements implemented) at Waterford 3 on a case-by-case basis in the past, the task force felt there was a benefit in performing a comprehensive review to integrate the previous efforts."

The NRC staff therefore finds that enhancements to the licensee's Procedure OP-1-003, "Reactor Coolant System Drain Down," were required as part of the corrective actions resulting from the July 1986 event. Further revisions to this same procedure were required following the licensee's task force review of Generic Letter 87-12 in order to further reduce the likelihood of experiencing future sustained losses of shutdown cooling capability with the RCS partially drained. The licensee's July 1986 event corrective actions were only sufficient enough to preclude loss of RCS level control under virtually the same conditions that occurred in July 1986. The Generic Letter 87-12 corrective actions were intended to more broadly address the effects and importance of RCS level control during part-loop operations. On this basis, the NRC staff concludes that the programmatic improvements described in Generic Letter 87-12 were a continuation of the corrective actions that occurred following the July 1986 sustained loss of shutdown cooling event at Waterford 3.

C. LP&L argues that the first Generic Letter 87-12 response statement cited in Violation A should not be construed as a commitment because if it were interpreted literally, the licensee could never conduct part-loop operations with an improved reactor vessel water level indicating system (i.e., the PWLIS) because cross checks of level could always have to be conducted by comparing the RLIS and the HJTC system. The NRC staff agrees with the licensee that a Generic Letter response is not meant to provide a detailed explanation of the licensee actions in response to a particular issue but rather is meant to provide a summary description of the actions. Such a summary would in turn provide the NRC staff with an appreciation of the licensee's approach to a particular problem. In this case a reasonable reading of the licensee's response to Generic Letter 87-12 is that the licensee intended to require that two independent methods of level indication be utilized when conducting part-loop operations. The individual methods of indication to be used can be changed at the licensee's discretion. If however, the licensee subsequently modifies its procedures to no longer require two independent level indications, it is expected that the NRC staff would be made aware of such a fundamental change. The licensee's reasoning fails to consider the key element of the programmatic enhancement that the NRC staff believed the licensee intended to implement, i.e., that two independent and diverse level measurement systems would always be used by the operators. The licensee's new RWLIS is not independent of the previously existing RLIS because the RLIS level sensing piping taps into the RWLIS level sensing piping. Since the RWLIS and RLIS are not independent of each other, either system would have to be used independently of the HJTC system (the only remaining level indicating system) in order to conduct part-loop operations with two independent level indicating systems. Notwithstanding the licensee's contention that a prerequisite to the

governing procedure (Procedure OP-1-003, Rev. 6, Reactor Coolant System Draindown) permits part-loop operations without the HJTC system in service, Step 6.4.8 of the same procedure clearly incorporates this programmatic improvement.

LP&L further contends that the first response statement to Generic Letter 87-12 cited in Violation A is composed of summary statements of then extant procedures that did not cover all possible instances of applicability. Specifically, the licensee cites a passage in Section 6.2.1 of their response that states "* * * the HJTC system is available as a reliable cross check for other RCS level indications when the reactors head is in place." The NRC staff agrees that there is no specific langauge in LP&L's response that commits to not performing part-loop operations when the HJTC system is not operable. However, it is the NRC staff's understanding that the second response statement cited in Violation A was intended to preclude the conduct of part-loop operations with the vessel head not in place. Since LP&L apparently intended to have the HJTC system in service when the reactor vessel head is in place, the first two response statements, when taken together, appear to preclude part-loop operations when the HJTC system is inoperable. However, notwithstanding the interpretation of these Generic Letter 87-12 response statements, it is the NRC staff's conclusion that LP&L had intended not to conduct part-loop operations under any circumstances without two independent and diverse means of reactor vessel water level indication available.

The implication in the licensee's discussion of the second response statement was that there could be conditions in which the reactor vessel head may not be in place while at the same time the reactor vessel water level may be drained down to a level at or near that of the hot leg centerline. LP&L provided no examples, however, of such possible conditions. In reading Section 6.2.2. "Temperature," of the licensee's response to Generic Letter 87-12, there does not appear to be a basis to infer that there could be any plausible exception for not maintaining reactor vessel water level several feet above the hot leg centerline when the reactor vessel head is not in place. In Section 6.2.2, the licensee discussed the importance of temperature indication in determining the approach to boiling and the need for determining when the containment should be isolated. The licensee stated in Sections 6.2.2 and 5.2.2 that when the vessel head is in place (except when preparing for head removal or installation) at least two core exit thermocouples (CETs) would be available for temperature indication. It is in this context that LP&L noted that reactor vessel water level would be maintained several feet above the hog leg centerline when CET information is not available (i.e., when the vessel head is not in place). The NRC staff strongly agrees with the sound reasoning of this position and could find no prudent reason for deviating from it. The NRC staff concludes that had the licensee revised OP-1-003, "Reactor Coolant System Drain Down," to include this programmatic enhancement as a precaution or limitation to the procedure, and correctly implemented such procedural guidance on May 12, 1988, the event would not have occurred because plant initial conditions would not have been set.

With respect to the third response statement specified in Violation A, the NRC staff agrees that the RLIS length "was maintained to a minimum" at the time of the response to Generic Letter 87-12. However, as a result of the subsequent RLIS modification necessitated by the installation of the new RWLIS, RLIS tubing was not maintained to a minimum. The NRC staff's concern in this instance is that while the licensee recognized the importance of minimizing tubing length when responding to the Generic Letter, that concern was not applied to a later situation where it was equally applicable. Had that been done, proper indication may have been available even though the backfill and walkdown procedures described in Violation B were not performed.

Restatement Violation B

Violation B

B. *Failure to follow procedures.* 10 CFR Part 50, Appendix B, Criterion V, requires, in part, that activities affecting quality be prescribed by documented instructions, procedures, or drawings. The activities shall be accomplished in accordance with these instructions, procedures, or drawings.

Pursuant to this requirement, Waterford 3 Operating Procedure OP-1-003, Revision 6, "Reactor Coolant System Drain Down," establishes, in part, the requirements for draining down the reactor coolant system (RCS) to the refueling water storage pool (RWSP):

1. Step 6.4.8 of Procedure OP-1-003, Revision 6, states that the plant staff will "Perform frequent cross checks of the RWLIS, RLIS (Tygon Tubing), if in service, and the HJTC level indication on QSPDS, during RCS drain down."

2. Step 8.4.6 of Attachment 8.4 of Procedure OP-1-003, Revision 6, requires the blowdown of water from the pressurizer reference leg.

3. Attachment 8.4 of Procedure OP-1-003, Revision 6, requires in part, a backfill and venting of the tubing in the refueling water level indicator system (RWLIS) to ensure that air is removed from the system.

4. Step 8.6.6.5 of Attachment 8.6 of Procedure OP-1-003, Revision 6, requires that the refueling level indicator of the refueling level indication system (RLIS) be inspected for any condition which could cause the refueling level indicator to give false indication.

Contrary to the above, on May 12, 1988, Procedure OP-1-003, Revision 6, was not followed in that:

1.a. During a drain-down of the RCS to the RWSP, no cross checks of reactor vessel water level were performed between the RWLIS indicators and the heated junction thermocouple (HJTC), water level indicator system indicators as required by Step 6.4.8 of Procedure OP-1-003, Revision 6. Further, at the time of the RCS drain-down, the HJTC water level indicator system was not operable.

1.b. During a second RCS drain-down of May 12, 1988, plant operators relied solely on reactor vessel water level indication provided by the RLIS, even though Step 6.4.8 of Procedure OP-1-003, Revision 6, requires that cross checks of the RLIS indications be made with the RWLIS indications.

2. The RWLIS level detector reference leg was apparently not blown down as required by Step 8.4.6 of Attachment 8.4 of Procedure OP-1-003, Revision 6, in that licensee personnel detected water in the reference leg subsequent to the commencement of the RCS drain down. The discovery of water in the RWLIS detector reference leg contributed to the licensee's decision to rely solely on the RLIS for reactor vessel water level indication.

3. RCS drain-down to part-loop was performed even though the RWLIS backfill and venting had not been performed as required by Attachment 8.4 of Procedure OP-1-003, Revision 6. Performance of the RWLIS backfill would have removed entrapped air which can cause false water level indication.

4. Even though the RLIS tubing was inspected prior to and during the RCS drain-down of May 12, 1988, it was not performed in accordance with Step 8.6.6.5 of Attachment 8.6 of Procedure OP-1-003, Revision 6, in that several

licensee personnel, initially, failed to detect upon inspection, that approximately 30 feet of excess RLIS hose contained entrapped air and consequently caused erroneously high RLIS reactor vessel water level indication.

Summary of Licensee's Response to Violation B

The licensee admits to Violation B, but takes issue with two of the violation statements. The licensee notes that no cross checks of the RLIS or RWLIS with the HOTC system are required because Prerequisite 3.3 of OP-1-003, Revision 6, states that "OSPDS HOTC level indications * * * are in service when the reactor vessel head is in place, except when preparing for head removal or replacement." The licensee was in the process of installing the reactor vessel head while conducting part-loop operations thereby obviating the need for having the HJTC system in service.

The licensee denies that the operators relied solely on RLIS indications during the second drain down. LP&L states that the second drain down was halted due to discrepancies between the RWLIS and the RLIS noted by operator cross checks.

NRC Evaluation of Licensee's Response to Violation B

The NRC staff agrees that Prerequisite 3.3 as currently stated in OP-1-003, Revision 6, "Reactor Coolant System Drain Down," allows entry into the procedure without an operable HJTC system when the reactor vessel head is not in place. The existence of this prerequisite is not by itself inappropriate provided that before drain down commences a second level indicator is operable. However, its existence without a later procedural step to place the system in operation is inappropriate for two reasons. First, the licensee's Generic Letter 87-12 programmatic improvement was intended to preclude draining down to the RCS hot leg centerline when the reactor vessel head is not in place. Second, step 6.4.8 of OP-1-003, Revision 6 could not have been implemented, as stated, on May 12, 1988 with the HJTC inoperable. The procedure at issue is subject to two interpretations. First, accepting that the prerequisite does not require HJTC to be operable when the head is being removed or installed because of the need to disconnect the HJTC, the procedure must presume it is operable prior to drain down in order to accomplish step 6.4.8. Under this reading the procedure was not followed in that the HJTC was not used in accordance with step 6.4.8. Alternatively, notwithstanding the prerequisite allowing HJTC to be out of service, the procedure can be considered inadequate because it is internally inconsistent with the requirement to use the HJTC. In either case, the procedure is not sufficiently clear for acceptable use. However, the staff, in finding the violation, utilized the first reading because it gives full credit to each step and is consistent with the response to the Generic Letter.

The NRC staff agrees that during the drain down that commenced at 9:13 a.m. on May 12, 1988, disparities between the RLIS and RWLIS level indicators led Waterford 3 operators to again stop the drain down of the RCS. However, in the NRC staff's review of this event, that drain down was considered the third of three periods of draining that occurred, with the first drain down commencing at approximately 3:09 a.m. on May 12 and, as discussed below, the second commencing at approximately 5:14 a.m. The Waterford 3 Independent Safety Evaluation Group (ISEG) noted in the Draft Assessment Report 111-88 that upon recommencing drain down at 5:14 a.m. on May 12, operators decided to use only the RLIS to continue the drain down that had started earlier that morning. As stated in the report, the operators were reluctant to rely on level indications from the RWLIS system since it had not been recalibrated after having found water in the reference leg. Finding water in the reference leg resulted in confusion over whether the instruments had been calibrated with the reference leg wet or dry. The RWLIS reference leg was not blown down as required by procedure, and it appears that discovery of water in the reference leg and the resulting confusion contributed to the course of events that led to the cavitation of the operable SDC pump. For these reasons the staff concludes that for the second drain down only the RLIS indicator was used.

Summary of Licensee's Request for Reclassification of NOV Severity Level and Withdrawal of Civil Penalty

The licensee argues that the May 12 event conditions do not meet the threshold for a Severity Level III violation because a loss of a required safety system never occurred. They agree that the procedural violations noted in Violation B clearly occurred and led to LPSI pump cavitations. However, LP&L argues that the results of these procedural violations are consistent with a Severity Level IV classification, i.e., failure to meet regulatory requirements that have more than minor safety or environmental significance. Consequently, LP&L requests that the NOV be reassigned as a Severity Level IV violation and the Civil Penalty be rescinded as not generally applicable to a Severity Level IV violation.

NRC Response to Licensee's Request for Reclassification of NOV Severity Level

Since the NRC staff does not agree with the licensee's denial of Violation A for reasons that have been previously stated in this Appendix, and since the licensee has made a qualified admission of Violation B, which the NRC staff has also previously addressed, it is concluded the violations occurred as stated. As indicated in Generic Letter 87-12 and recently reiterated in Generic Letter 88-17 the NRC staff concerns regarding the issue of decay heat removal in a pressurized water reactor with reduced reactor coolant system inventory have increased over the past several years. The articulation of those concerns in the above mentioned documents as well as in other issuances by the NRC staff make it clear that not only are such problems of more than minor concern but when it is considered that the violations in this case involved many of the factors involved in a past event, they are of significant concern and therefore properly classified at Severity Level III.

NRC Conclusion

The NRC staff concludes that the violations described in the August 18 Notice of Violations and Proposed Imposition of Civil Penalty occurred as stated. Accordingly, the proposed civil penalty in the amount of Fifty Thousand Dollars ($50,000) should be imposed.

FR Doc. 89-562 Filed 1-10-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-272 and 50-311]

Public Service Electric and Gas Co.; Withdrawal of Application For Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Public Service Electric and Gas Company (the licensee) to withdraw its November 19, 1985 (LCR 84-23) application for proposed amendments to Facility Operating Licenses Nos. DPR-70 and DRP-75 for the Salem, Generating Station, Units Nos. 1 and 2, located in Salem County, New Jersey.

The amendment requested deletion of Appendix B, the Environmental Technical Specifications (ETS), and the

substitution of an Environmental Protection Plan (EPP) for the ETS.

The Commission issued a Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing which was published in the **Federal Register** on July 2, 1986 (51 FR 24261).

For further details with request to this action, see the application for amendment dated November 19, 1985 (LCR 84-23) and the licensee's letter dated December 9, 1988 withdrawing the application for license amendment. The above documents are available for inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 3rd day of January 1989.

For the Nuclear Regulatory Commission.

James C. Stone,

Project Manager, Project Directorate I-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-563 Filed 1-10-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-271-OLA; ASLBP No. 87-547-02-LA]

Vermont Yankee Nuclear Power Corp.; Vermont Yankee Nuclear Power Station; Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721 and 2.721(b), the Atomic Safety and Licensing Board for *Vermont Yankee Nuclear Power Corporation* (Vermont Yankee Nuclear Power Station), Docket No. 50-271-OLA, is hereby reconstituted by appointing Administrative Judge Gustave A. Linenberger, Jr., in place of Administrative Judge Glenn O. Bright, who is no longer available to serve.

As reconstituted, the Board is comprised of the following Administrative Judges:

Charles Bechhoefer, Chairman
James H. Carpenter
Gustave A. Linenberger, Jr.

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Gustave A. Linenberger, Jr., Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

Issued at Bethesda, Maryland, this 4th day of January 1989.

[FR Doc. 89-564 Filed 1-10-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-271-OLA-2; ASLBP No. 88-567-04-OLA]

Vermont Yankee Nuclear Power Corp.; Vermont Yankee Nuclear Power Station; Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721 and 2.721(b), the Atomic Safety and Licensing Board for *Vermont Yankee Nuclear Power Corporation* (Vermont Yankee Nuclear Power Station), Docket No., 50-271-OLA-2, is hereby reconstituted by appointing Administrative Judge Gustave A. Linenberger, Jr., in place of Administrative Judge Glenn O. Bright, who is no longer available to serve.

As reconstituted, the Board is comprised of the following Administrative Judges:

Charles Bechhoefer, Chairman
James H. Carpenter
Gustave A. Linenberger, Jr.

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Gustave A. Linenberger, Jr., Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 4th day of January 1989

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 89-565 Filed 1-10-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26421; File No. SR-MBS-88-15]

Self-Regulatory Organizations; MBS Clearing Corp.; Order Approving Proposed Rule Change

On September 1, 1988, the MBS Clearing Corporation ("MBSCC") filed with the Commission a proposed rule change (File No. SR-MBS-88-15) under section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] The proposal would impose a schedule of penalties on MBSCC participants ("Participants") who fail to make timely payment of their debit balances. The Commission published a notice and order granting accelerated temporary approval of the proposal in the **Federal Register** on November 4, 1988.[2] No comments were received. This order approves the proposal.

The proposed rule change imposes a schedule of penalties on Participants in the MBSCC Depository Division ("Depository Division") who fail to make timely payment of their debit balances. First, if payment of a Participant's debit balance is received after the Depository Division's 4:15 p.m. (EST) cutoff time, under the proposal Participants would be charged one of the following penalties:

Amount of payment	Penalty
(1) $50,000 or less	$50.
(2) $50,001 to $150,000.	$100.
(3) $150,001 to $1,000,000.	$250.
(4) More than $1,000,000.	$250 or the amount equal to one day's interest at the rate of 1% per annum, whichever is greater.

Second, if as a result of a late payment or nonpayment of a Participant's debit balance, the Depository Division is required to borrow or advance funds to cover the debit balance, the Depository Division would charge, in addition to interest, but in lieu of the penalty specified above, a penalty equal to the greater of $500 or one day's interest at 250 basis points (2.5%).

MBSCC states that the proposed penalties are consistent with section 17A of the Act in that they promote the prompt and accurate clearance and settlement of securities transactions among Participants and provide appropriate disciplinary action for violation of the provisions of the Depository Division rules.

The Commission believes that the proposal is consistent with the Act and in particular, section 17A(b)(3)(G).[3] The

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 26226 (October 28, 1988) 53 FR 44691.

[3] Section 17A(b)(3)(G) directs a clearing agency's rules to provide that its participants be appropriately disciplined for violation of any provision of the clearing agency's rules by expulsion, suspension, limitation of activities, functions and operations, fine, censure, or any other fitting sanction.

proposed penalties are adopted from Depository Division rules that were considered and discussed in the Commission order granting MBSCC temporary registration as a clearing agency.[4] The purpose of the proposal is to encourage timely payment of debit balances by Participants. The Commission believes that the proposed penalties are well suited to encourage such timely payment. Late payment of debit balances by Participants increases the risk of loss to MBSCC and its Participants because of the increased risk of default or insolvency by the delinquent Participant until the debit balance is paid. The Commission believes it important that Participants make timely payment of debit balances for this reason and that the proposal will encourage such a result.

In the event that a Participant is assessed a penalty for late payment of a debit balance, the Depository Division rules, consistent with section 17A(b)(3)(H),[5] provide Participants with an opportunity to appeal the assessment of the proposed penalty, allowing Participants to explain any mitigating circumstances. The penalty will not become effective until the period for appeal has lapsed and will be stayed during the pendency of the appeal. Appeals will be considered by a panel composed of three members of the Board of Directors. Decisions of a panel are reviewable by the Board of Directors.[6] The Commission believes that MBSCC's appeal process will provide penalized Participants with a fair opportunity to be heard.

It is therefore ordered, pursuant to section 19(b) of the Act, that MBSCC's proposed rule change (File No. SR-MBS-88-15) be, and thereby is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: January 5, 1989.

Jonathan Katz,

Secretary.

[FR Doc. 89-579 Filed 1-10-89; 8:45 am]

BILLING CODE 8010-01-M

[4] Securities Exchange Act Release No. 24046 (February 2, 1987) 52 FR 4218.

[5] Section 17A(b)(3)(H) directs that the rules of a clearing agency provide a fair procedure with respect to the disciplining of participants, the denial of participation to any person seeking participation therein, and the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency.

[6] *See* MBSCC Depository Division Rules, Article III, Rules 3 and 7.

[Release No. 34-26418; File No. SR-MSTC-88-8]

Self-Regulatory Organizations; Midwest Securities Trust Company; Proposed Rule Change and Order Granting Temporary Accelerated Approval

On December 2, 1988, pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change to enhance MSTC's File Transmission Service ("FTS") by allowing Depository Delivery Instructions ("DDI")[1] to be transmitted through FTS. Subsequently on January 3, 1989, MSTC amended its proposed rule change (SR-MSTC-88-8) so that it may be reviewed by the Commission pursuant to section 19(b)(2) of the Act. The Commission is publishing this notice and order to solicit comment on the proposed rule change and approve it on a temporary basis through March 31, 1989.

I. Description

The proposed rule change is designed to provide FTS users with a new method of submitting DDI instructions to MSTC. Currently, in order to submit DDI instructions to MSTC, participants must manually enter those instructions into their MSTC terminals or deliver computer tapes to MSTC. The proposal will allow participants to transmit DDI instructions directly from their computers to MSTC's computer. To transmit DDI instructions through the FTS system participants must write a computer program which extracts DDI information from their internal files and creates a new file of DDI information to be submitted to MSTC via FTS.[2]

MSTC has incorporated security features into the service which will prevent unauthorized users from submitting DDI instructions via FTS. To ensure the security of the system, prior to the submission of any DDI instructions, participants must obtain access codes from MSTC. MSTC will not process any transmissions submitted without the appropriate access codes. In MSTC's proposed rule filing, MSTC requests authorization for low volume users to use dial-up capability to submit DDI's through FTS to MSTC. MSTC however, will only accept DDI instructions from participants using dedicated telephone lines during the pilot period.

II. MSTC's Rationale

MSTC believes that the proposal is consistent with the Act in that it provides for the prompt and accurate clearance and settlement of securities transactions, and fosters cooperation among persons engaged in such activities by providing an efficient mechanism for transmitting DDIs. The proposal provides a more efficient method of transmitting DDI information as it will allow firms to automatically create delivery instructions from in-house computer systems, thereby avoiding re-entry of DDI information into the system used to transmit information to MSTC. In addition, MSTC requests that the Commission accelerate the effective date of this proposal so that it may begin to operate the service on a pilot basis.

III. Request for Comments

You may submit written comments within 21 days after notice is published in the **Federal Register.** Please file six copies of your comments with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. § 552, are available at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal office of MSTC. All submissions should refer to File No. SR-MSTC-88-8.

IV. Temporary Approval

The Commission finds that there is good cause for approving a pilot program prior to the thirtieth day after publication in the **Federal Register.** MSTC's proposal is an enhancement of an approved service, FTS, which the Commission has determined was designed to improve the method of transmission of trade data and clearance and settlement information between MSTC and its participants.[3] The Commission believes that granting such approval will allow MSTC test the procedures, software, and hardware used to provide this service by offering it on a pilot basis for approximately 90 days. During that time, the Commission

[1] The DDI service allows firms to transmit delivery instructions to deliver securities to other MSTC participants and non-MSTC participants.

[2] MSTC has developed a data entry format which participants must use to submit DDI information via FTS.

[3] *See* Securities Exchange Act Release No. 25718 (May 18, 1988), 53 FR 19074.

will review the service's operation to determine whether it will grant permanent approval.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-MSTC-88-8) be, and hereby is, approved on a temporary basis through March 31, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 4, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-580 Filed 1-10-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26419; File No. SR-NYSE-88-31]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] the New York Stock Exchange, Inc. ("Exchange" or "NYSE"), on October 18, 1988, submitted to the Securities and Exchange Commission ("Commission") a proposal to institute permanent guidelines to govern stock trading once the Exchange's circuit breaker and sidecar provisions have gone into effect.[3] The proposed rule change was published for comment in Securities Exchange Act Release No. 26206 (October 21, 1988), 53 FR 43498. No comments were received on the proposal.

The NYSE recently adopted Rule 80B and amended Rule 80A to implement certian procedures that will be activated during volatile market conditions.[4] In brief, Rule 80A involves routing into a separate file (the "sidecar" file) automated, program trading-related market orders in each of the NYSE-listed stocks comprising the Standard & Poor's 500 Stock Index ("S&P 500"). After five minutes in the sidecar file, orders will be compared, any order imbalances will be reported, and, if there is not sufficient trading interest to allow for an orderly execution of transactions in a stock, trading in that stock will halt. Rule 80A only will apply after the price of the primary S&P 500 futures contract traded on the Chicago Merchantile Exchange has declined 12 points from the previous trading day's close.[5]

The "circuit breaker" provisions of Rule 80B require a one-hour halt in the trading of all stocks, stock options, and stock index options on the NYSE if the Dow Jones Industrial Average ("DJIA") declines 250 or more points from the previous day's closing value. Once trading has been reopened, trading will halt for an additional two hours if the DJIA declines 400 points from the previous day's close.

The NYSE's proposed rule change includes guidelines to govern (1) mandatory trading halts and dissemination of price indications when Rule 80A is in effect, and (2) mandatory dissemination of price indications on all openings and on reopenings when Rule 80B is in effect.[6] In particular, during the five-minute period that Rule 80A is in effect and automated, program trading-related orders in the NYSE-listed stocks comprising the S&P 500 are diverted to a sidecar file, the Exchange believes that "market conditions may warrant a widening of normal quotation spreads in a particular stock."[7] In addition, the Exchange believes that during the five-minute period "reasonable trade variations should nonetheless take place" and Intermarket Trading System ("ITS")[8] commitments to trade "should receive an execution at the best available bid or offer * * * in accordance with reasonable trade-to-trade continuity".[9]

Under Rule 80A, trading in any sidecar stock will halt at the end of the five-minute period if there is not sufficient trading interest on the Exchange to allow for orderly executions in that stock. Under the current proposal, a trading halt and dissemination of a price indication would be mandatory for any stock if the next sale of such stock would be (1) more than one point from a last scale under $20; (2) more than two points from a last sale between $20 and $99 7/8; or (3) more than three points from a last sale of $100 or more. While a trading halt would not be mandatory on the basis of a 50,000 share imbalance at the end of the five-minute period, the size of any imbalance of 50,000 or more shares in any halted stock among the 50 highest-capitalized NYSE-listed stocks in the S&P 500 would be required to be disseminated.

As noted above, the Exchange has proposed guidelines to be effective prior to any opening and for the reopening of trading following a trading halt instituted pursuant to the circuit breaker provisions of NYSE Rule 80B. These guidelines would require dissemination of a price indication for an opening or Rule 80B reopening that would result in a price change constituting the lesser of 10% or three points from the prior NYSE close, or five points if the previous close was $100 or higher. Dissemination of a price indication would not be mandatory, however, if the resulting price change would be less than one point.

In support of its proposed guidelines to govern trading when the sidecar provisions of rule 80A are in effect, the Exchange cites the need to "provide guidance, in a volatile market, as to how specialists may quote their market during the five-minute sidecar period, when there may be some uncertainty as to the possible build-up of significant market imbalances * * *."[10] In addition, the NYSE notes its desire to "provide standard, uniform criteria (mandatory price indications) for disseminating market information where a significant price change appears likely once the sidecar period has ended."[11] In support of its proposal to require mandatory price indications on openings and Rule 80B reopenings, the Exchange argues that it must provide guidance to specialists and NYSE Floor Officials, "by means of standard, uniform criteria for dissemination of market information, where significant price changes occur on any opening of trading."[12]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] The guidelines described herein were approved by the Commission on a temporary basis through December 31, 1988 in Securities Exchange Act Release No. 26207 (October 21, 1988), 53 FR 43500.

[4] NYSE Rule 80B and the amendment to Rule 80A were approved by the Commission and are described in detail in Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637.

[5] The amendment to Rule 80A replaced a former version of Rule 80A which also imposed restrictions on the use of automated NYSE order routing systems during times of market volatility. *See* Securities Exchange Act Release No. 25599 (April 19, 1988), 53 FR 13371.

[6] Current NYSE policy requires, and would continue to require, dissemination of a price indication upon any delayed opening or regulatory or nonregulatory trading halt, except for a trading halt put into effect pursuant to the circuit breaker provisions of Rule 80B.

[7] 53 FR at 43498. The Exchange guidelines described herein would be distributed to all NYSE members in an Information Memorandum. *See* 53 FR at 43499-500.

[8] ITS is a communication system designed to facilitate trading among competing markets by providing each market with order routing capabilities based on current quotation information.

[9] 53 FR at 43498.

[10] *Id.* at 53 FR at 43499.

[11] *Id.*

[12] *Id.* On days when the Rule 80B circuit breakers go into effect, the Exchange intends to treat as a delayed opening trading in a security that has not reopened one-half hour after the resumption of trading on the Exchange.

exchange, and, in particular, the requirements of section 6 [13] and the rules and regulations thereunder. In particular, the Exchange's proposed guidelines to govern trading once Rules 80A and 80B have gone into effect will provide specialists and other market participants with precise criteria to guide their activities during periods of acute market stress. The guidelines also should enhance the flow of stock price and order imbalance information, thereby facilitating trading in NYSE-listed stocks. In addition, the various mandatory trading halts included in the Exchange's guidelines should help prevent rapid declines in the prices of particularly volatile stocks by providing market participants with time to assess their trading activities in light of overall market trends. In sum, the NYSE's guidelines should enable it to better maintain fair and orderly markets during periods of peak market volatility.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change is adopted.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 5, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-581 Filed 1-10-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24801]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

January 5, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 30, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the manner. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Cedar Coal Company (70-7181)

Cedar Coal Company ("Cedar"), 40 Franklin Road, P.O. Box 2021, Roanoke, Virginia 24022, a subsidiary coal company of Appalachian Power Company, Inc., an electric utility subsidiary of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed a post-effective amendment to its application pursuant to sections 9(a), 10 and 13 of the Act and Rules 86, 90 and 91 thereunder.

By Commission order dated December 31, 1985 (HCAR No. 23973) Cedar was authorized to renovate, rebuild and modify major pieces of mining equipment at its Central Rebuild Shop ("Shop") both for associate companies and for non-associate companies. With respect to performing services for associate companies the order contained no expiration date; with respect to performing services for non-associate companies the order expired on December 31, 1988.

Cedar now requests authorization to provide such services for non-associate companies through December 31, 1991. Revenues from non-associate companies will not exceed in any calendar year revenues from associated companies. The revenue derived from providing services to non-associates would be used to reduce Shop operation costs (overheads) and thus reduce the rate charges by the Shop to associate companies.

Mississippi Power & Light Company (70-7325)

Middle South Utilities, Inc. ("MSU"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its electric utility subsidiary company, Mississippi Power & Light Company ("MP&L"), P.O. Box 1640, Jackson, Mississippi 39215-1640 have filed a post-effective amendment to their application-declaration subject to sections 6(a), 7, 9(a), 10 and 12(f) of the Act and Rule 43 thereunder.

By orders, dated December 24, 1986 (HCAR No. 24283) and June 10, 1988 (HCAR No. 24659), this Commission authorized MP&L to issue and sell to MSU, and MSU to purchase, from time to time through December 31, 1988, up to an aggregate of 2,609,000 additional shares of MP&L's authorized but unissued common stock, without nominal or par value, at a price approximately $23.00 per share, for an aggregate cash consideration not to exceed $60,007,000 ("Additional Shares").

At December 31, 1988, approximately 1,304,000 of the Additional Shares of MP&L had been sold to MSU for an aggregate cash consideration of approximately $30 million. Based upon MP&L's revised estimate of cash requirements for the period through December 31, 1989, it may be necessary for MP&L to issue and sell the remaining Additional Shares to MSU, from time to time during such period. Accordingly, MP&L requests authority through during which MP&L may issue and sell, and MSU may acquire, the remaining 1,305,000 Additional Shares for an aggregate cash consideration not to exceed $30,007,000.

New Orleans Public Service, Inc. (70-7350)

New Orleans Public Service, Inc. ("NOPSI"), 317 Baronne Street, New Orleans, Louisiana 70112, a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed with the Commission a post-effective amendment to its application, as amended, pursuant to sections 6(a) (2) and 7 of the Act.

By order dated May 12, 1987 (HCAR No. 24387), NOPSI was authorized to establish a new Mortgage ("Mortgage") providing for the issuance of Rate Recovery General and Refunding Mortgage Bonds ("G&R Bonds") and to issue and sell to institutional investors, $75 million of an initial series of G&R Bonds, 10.95% Series due May 1, 1997 ("10.95% Bonds"). The 10.95% Bonds were issued under a First Supplemental Indenture to the Mortgage, which, in relevant part, granted the holders of the 10.95% Bonds ("Bondholders") the right to tender such G&R Bonds to NOPSI for redemption upon the occurrence of certain specified events.

On February 4, 1988, the Council of the City of New Orleans adopted a resolution ("February 4th Resolution") that required NOPSI to write off and not recover from its retail electric customers $135 million of its Grand Gulf Steam Electric Nuclear Generating Station, Unit No. 1 ("Grand Gulf 1") related costs, which had been deferred for future recovery from customers, in addition to $51.2 million of previously

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[13] 15 U.S.C. 78f (1982).

[14] 15 U.S.C. 78s(b)(2) (1982).

incurred Grand Gulf 1 related costs that NOPSI had absorbed as part of the Rate Settlement with the City of New Orleans, which Settlement provided for recovery by NOPSI of its allocated share of costs associated with capacity and energy from Grand Gulf 1. As a result, NOPSI was required by the terms of the G&R Mortgage to cause an independent arbiter to deliver to the Trustee a certificate indicating whether, in the independent arbiter's opinion, the February 4th Resolution had currently materially impaired or prospectively would materially impair NOPSI's ability to perform its obligations in respect of all G&R Bonds outstanding under the G&R Mortgages. On June 24, 1988, the independent arbiter issued a certificate stating that, as to this issue, the opinion was affirmative, and, thus, activated the Bondholders rights to tender their G&R Bonds for redemption.

In accordance with the terms of the G&R Mortgage, on July 12, 1988, the Trustee notified the Bondholders of their right to tender their G&R Bonds for redemption; that is, that the Bondholders electing to exercise this right were required to tender their G&R Bonds to the Trustee not later than August 11, 1988 and that NOPSI would be required to redeem all outstanding G&R Bonds so tendered on August 26, 1988. However, NOPSI had insufficient funds available to redeem the G&R Bonds on August 26, 1988 because, according to NOPSI, the February 4th Resolution had a substantial and adverse effect upon its financial condition and cash flow.

In order to avoid redemption of the G&R Bonds, NOPSI sought and was granted authorization by supplemental order dated August 8, 1988 (HCAR No. 24712), to enter into an agreement with the Bondholders, whereby the Bondholders agreed to forbear from tendering their 10.95% Bonds on August 11, 1988 and NOPSI agreed, upon written notice from any Bondholder between November 24 and December 13, 1988, to purchase the 10.95% Bonds at a price of 100% of the principal amount thereof plus accrued interest to the date of purchase. However, the Bondholders did not have the right to give such notice, and NOPSI was not required to purchase any 10.95% Bonds, if an independent arbiter delivered a certificate to each Bondholder on or prior to November 23, 1988 stating that the impairment of NOPSI's ability to perform its obligations on the 10.95% Bonds had ceased because of judicial or regulatory action. In addition, a Bondholder was entitled to revoke its notice of tender at any time prior to purchase of its G&R Bonds.

NOPSI now states that the independent arbiter did not deliver the certificate by November 23, 1988. Because NOPSI did not expect to have sufficient funds available to purchase the 10.95% Bonds on February 10, 1989 and because it could not be assured that one or more Bondholder would not tender the 10.95% Bonds for purchase, NOPSI, by letter dated November 25, 1988 to the Bondholders, proposed to enter into a one year extension of their existing agreement. Under the terms of the newly proposed agreement ("Agreement"), the Bondholders would forebear from tendering their 10.95% Bonds for purchase on February 10, 1989 and NOPSI would, subject to requisite regulatory approval, and upon written notice from any Bondholder between November 24, 1989 and December 13, 1989, purchase on February 9, 1990 the 10.95% Bonds held by such Bondholder, at a price of 100% of the principal amount thereof plus accrued interest to the date of purchase. However, the Bondholders would not have the right to such notice, and NOPSI would not be required to purchase any 10.95% Bonds, if an independent arbiter delivers a certificate to each Bondholders by November 23, 1989 stating that the impairment of NOPSI's ability to perform its obligations on the 10.95% Bonds has ceased because of judicial or regulatory action. In addition, the agreement provides that a Bondholder may revoke its notice of tender at any time prior to purchase of its 10.95% Bonds.

NOPSI now states that, from November 24, 1988 through December 13, 1988, it did not receive written notice from any Bondholder demanding redemption of the 10.95% Bonds on February 10, 1989. Accordingly, NOPSI seeks authorization to carry out the proposed Agreement with the Bondholders.

New Orleans Public Service, Inc. (70-7448)

New Orleans Public Service, Inc. ("NOPSI"), 317 Baronne Street, New Orleans, Louisiana 70112, a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a post-effective amendment to its application with this Commission pursuant to sections 6(a)(2) and 7 of the Act.

By order dated January 13, 1988 (HCAR No. 24559), NOPSI was authorized to and did issue and sell to institutional investors, $40 million of NOPSI's Rate Recovery General and Refunding Mortgage Bonds ("G&R Bonds"), 13.20% Series due February 1, 1991 ("13.20% Bonds"), 13.60% Series due February 1, 1993 ("13.60% Bonds"), and 13.90% Series due February 1, 1995 ("13.90% Bonds"), under a Second Supplemental Identure to NOPSI's General and Refunding Mortgage, as amended ("G&R Mortgage"). The G&R Mortgage granted the holders of the 13.20%, 13.60% and 13.90% Bonds (collectively, "Bondholders") the right to tender such G&R Bonds to NOPSI for redemption upon the occurrence of certain specified events.

On February 4, 1988, the Council of the City of New Orleans adopted a resolution ("February 4th Resolution") that required NOPSI to write off and not recover from its retail electric customers $135 million of its Grand Gulf Steam Electric Nuclear Generating Station, Unit No. 1 ("Grand Gulf 1") related costs, which had been deferred for future recovery from customers, in addition to $51.2 million of previously incurred Grand Gulf 1 related costs that NOPSI had absorbed as part of the Rate Settlement with the City of New Orleans, which Settlement provided for recovery by NOPSI of its allocated share of costs associated with capacity and energy from Grand Gulf 1. As a result, NOPSI was required by the terms of the G&R Mortgage to cause an independent arbiter to deliver to the Trustee a certificate indicating whether, in the independent arbiter's opinion, the February 4th Resolution has currently materially impaired or prospectively will materially impair NOPSI's ability to perform its obligations in respect of all G&R Bonds outstanding under the G&R Mortgages.

On June 24, 1988, the independent arbiter issued a certificate stating that, as to this issue, the opinion was affirmative and, thus, activated the Bondholders rights to tender their G&R Bonds for redemption. In accordance with the terms of the G&R Mortgage, on July 12, 1988, the Trustee notified the Bondholders of their right to tender their G&R Bonds for redemption; that is, that the Bondholders electing to execise this right were required to tender their G&R Bonds to the Trustee not later than August 11, 1988 and that NOPSI would be required to redeem all outstanding G&R Bonds so tendered on August 26, 1988. However, NOPSI had insufficient funds available to redeem the G&R Bonds on August 26, 1988 because, according to NOPSI, the February 4th Resolution had a substantial and adverse effect upon its financial condition and cash flow.

In order to avoid redemption of the G&R Bonds, NOPSI sought and was granted authorization by supplemental order dated August 8, 1988 (HCAR No.

24711), to enter into an agreement with the Bondholders. Under the terms of the agreement, the Bondholders agreed to forbear from tendering their G&R Bonds on August 11, 1988 and NOPSI agreed, upon written notice from any Bondholder between November 24 and December 13, 1988, to purchase, on February 10, 1989, the G&R Bonds held by such Bondholders at a price of 100% of the principal amount thereof plus accrued interest to the date of purchase. However, the Bondholders did not have the right to give such notice, and NOPSI was not required to purchase any G&R Bonds, if an independent arbiter delivered a certificate to each Bondholder on or prior to November 23, 1988 stating that the impairment of NOPSI's ability to perform its obligations on the G&R Bonds had ceased because of judicial or regulatory action. In addition, a Bondholder was entitled to revoke its notice of tender at any time prior to purchase of its G&R Bonds. None of the Bonds were tendered to NOPSI for redemption on August 26, 1988.

NOPSI now states that the independent arbiter did not deliver the cetificate by November 23, 1988. Because NOPSI did not expect to have sufficient funds available to purchase the G&R Bonds on February 10, 1989 and because it could not be assured that one or more Bondholder would not tender the G&R Bonds for purchase, NOPSI, by letter dated November 25, 1988 to the Bondholders, proposed to enter into one year extension of their existing agreement. Under the terms of the newly proposed agreement ("Agreement"), the Bondholders would forebear from tendering their G&R Bonds for purchase on February 10, 1989 and NOPSI would, subject to requisite regulatory approval, and upon written notice from any Bondholders between November 24, 1989 and December 13, 1989, purchase on February 9, 1990 the G&R Bonds held by such Bondholder, at a price of 100% of the principal amount thereof plus accrued interest to the date of purchase. However, the Bondholders will not have the right to such notice, and NOPSI will not be required to purchase any G&R Bonds, if an independent arbiter delivers a certificate to each Bondholders on or prior to November 23, 1989 stating that the impairment of NOPSI's ability to perform its obligations on the G&R Bonds has ceased because of judicial or regulatory action, In addition, a Bondholder may revoke its notice of tender at any time prior to purchase of its G&R Bonds.

NOPSI further states that, from November 24, 1988 through December 13, 1988, it did not receive written notice from any Bondholder demanding redemption of the G&R Bonds on February 10, 1989. Accordingly, NOPSI seeks authorization to carry out the proposed Agreement with the Bondholders.

Louisiana Power & Light Company, et al. (70–7602)

Middle South Utilities, Inc. ("MSU"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its electric utility subsidiary company, Louisiana Power & Light Company ("LP&L"), 142 Delaronde Street, New Orleans, Louisiana 70174 have filed an application-declaration pursuant to Sections 6(a), 7, 9(a), and 10 of the Act and Rule 43 thereunder.

LP&L proposes to issue and sell from time to time through December 31, 1989, and MSU proposes to acquire, an aggregate of up to 18,961,000 additional shares of LP&L's common stock, without nominal or par value, at a price per share of $6.59, for an aggregate cash consideration not to exceed $125 million. LP&L's Restated Articles of Incorporation, as amended ("Charter"), presently provide for 150 million authorized shares of common stock, of which 137,110,900 such shares are issued and outstanding and owned by MSU. Accordingly, LP&L proposes, by appropriate corporate action and with the consent of MSU, further to amend its Charter to increase the number of shares of its authorized common stock from 150 million to 250 million shares.

System Energy Resources, Inc. (70–7604)

System Energy Resources, Inc. ("SERI"), 188 East Capitol Street, One Jackson Place, Jackson, Mississippi 39201, a subsidiary of Middle South Utilities, Inc. ("MSU"), a registered holding company, has filed an application pursuant to Sections 9(a) and 10 of the Act.

Pursuant to authority granted in prior Commission orders, SERI is currently leasing a portion of the nuclear fuel, including facilities incident to its use ("Nuclear Fuel"), required for use at Unit No. 1 of SERI's Grand Gulf Nuclear Generating Station ("Grand Gulf") from Port Gibson Energy, Inc. ("Gibson") (last approved, HCAR No. 24697, August 18, 1988), and from Prulease Inc. ("Prulease") (last approved, HCAR, No. 24591, February 29, 1988). In order to restructure its leasing arrangement, SERI now proposes to enter into a Lease Agreement ("Lease") for its Nuclear Fuel for Grand Gulf with River Fuel Trust #3 ("Trust"). The Trust will be formed under the laws of the State of New York pursuant to a Trust Agreement among Morgan Guaranty Trust Company of New York, as trustor ("Trustor"), United States Trust Company of New York, not in its individual capacity, but solely as trustee ("Trustee") and SERI, as beneficiary. The Trust will be specifically created for this restructuring by the Trustor.

It is proposed that the Trust will acquire the Nuclear Fuel owned by Givson and Prulease along with certain Nuclear Fuel owned by SERI. Promptly after such acquisition, SERI will terminate its Lease Agreement with Gibson and its Lease Agreement with Prulease. Gibson will terminate its Restated and Amended Credit Agreement with Union Bank of Switzerland, Houston Agency.

Under the terms of the Lease, the Trust will make payments to suppliers, processors and manufacturers necessary to provide Nuclear Fuel for Grand Gulf, or SERI will make such payments and will be reimbursed by the Trust. The maximum obligation of the Trust to make payments for Nuclear Fuel initially will be $180 million at any one time outstanding, although the Trust may make such payments of up to $185 million.

Under the Lease, SERI will be responsible for operating, maintaining, repairing, replacing, and insuring the Nuclear Fuel and for paying all taxes and costs arising out of the ownership, possession or use thereof. The term of the Lease will be the later to occur of (i) the final maturity date of one or more Secured Notes, defined below, on a date on which no other Secured Notes are outstanding, or (ii) February 28, 1994. The term shall automatically be extended for one additional year without the necessity of action by SERI or the Trust, unless either SERI or the Trust shall give notice to the other by February 1, 1992, or each succeeding February 1 up to the year 2037, of its desire to so terminate the term of the Lease on February 28, or, in the case of a leap year, February 29 of the second following year. In any event the Lease will terminate no later than February 28, 2039. Authorization is requested for additional extensions of the Lease through February 28, 2039, without seeking further Commission authorization prior to entering such extensions.

Payments under the Lease will be payable quarterly and will include (A) a Quarterly Lease Charge, as defined in the Lease, which will include allocated operational and financing costs of the Trust, and (B) a Burn-Up Charge, as defined in the Lease, equal to the cost of the Nuclear Fuel consumed while the

Nuclear Fuel is in the reactor and producing heat. When the Nuclear Fuel is not in the reactor and producing heat, SERI may elect to capitalize Quarterly Lease Charges or daily portions thereof so long as the commitment under, and defined in, the credit agreement between the Trust and certain commercial banks, and the aggregate principal amount of all Secured Notes outstanding exceeds the sum of (i) the Stipulated Loss Value, as defined in the Lease, of the Nuclear Fuel, (ii) the amount of such charges and (iii) $5 million. SERI may consequently, subject to the foregoing limitation, defer rental payments until those times during commercial operation when the Nuclear Fuel is in the reactor and producing heat in the production of electric energy.

Middle South Utilities, Inc. (70-7606)

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, has filed a declaration pursuant to section 12(b) of the Act and Rule 45 thereunder.

System Energy Resources, Inc. ("SERI"), a subsidiary of Middle South, has proposed by application in a companion filing, dated December 22, 1988 (S.E.C. File No. 70-7604), to enter into a lease ("Lease") with River Fuel Trust #3 ("Trust"), under which SERI would lease from the Trust nuclear fuel and facilities incident to its use ("Nuclear Fuel"). The Nuclear Fuel will be used in Unit No. 1 of SERI's Grand Gulf Nuclear Generating Station ("Grand Gulf 1").

In order to induce the Trust to enter into the Lease, it will be necessary for Middle South to guarantee, to the Trust, SERI's obligations under the Lease. Middle South proposes, therefore, to enter into a Guaranty ("Guaranty"), under which Middle South will guarantee to the Trust that SERI will perform its various obligations and covenants under the Lease. Middle South will agree that its obligations under the Guaranty will be unconditional and not subject to any set-off, counterclaim, offset or recoupment whatsoever.

The Trust will be formed under the laws of the State of New York pursuant to a Trust Agreement among Morgan Guaranty Trust Company of New York, as trustor ("Trustor"), United States Trust Company of New York, as trustee ("Trustee") and SERI, as beneficiary. The Trust will be specifically created for SERI's lease restructuring by the Trustor. Under the terms of the Lease, the Trust will make payments to suppliers, processors and manufactures necessary to provide Nuclear Fuel for Grand Gulf 1, or SERI will make such payments and will be reimbursed by the Trust. The maximum obligation of the Trust to make payments for Nuclear Fuel initially will be $180 million at any one time outstanding, although the Trust may make such payments of up to $185 million.

Under the Lease, SERI will be responsible for operating, maintaining, repairing, replacing, and insuring the Nuclear Fuel and for paying all taxes and costs arising out of the ownership, possession of use thereof. The term of the Lease will be the later to occur of (i) the final maturity date of one or more Secured Notes, as defined in the Lease, on a date on which no other Secured Notes are outstanding, or (ii) February 28, 1994. It shall be automatically extended for one additional year without the necessity of action by SERI or the Trust, unless either the Trust or SERI shall give notice to the other by February 1, 1992, or each succeeding February 1 up to 2037, of its desire to so terminate the term of the Lease on February 28, or, in the case of a leap year, February 29 of the second following year. In any event, the Lease will terminate no later than February 28, 2039. Payments under the Lease will be payable quarterly and will include (A) a Quarterly Lease Charge, as defined in the Lease, which will include allocated operational and financing costs of the Trust, and (B) a Burn-Up Charge, as defined in the Lease, equal to the cost of the Nuclear Fuel consumed while the Nuclear Fuel is in the reactor and producing heat.

Middle South has been advised by representatives of the Trust that the collateral agent ("Collateral Agent"), for certain parties to a Credit Agreement and certain Secured Note Agreements to be entered into by the Trust to finance its acquisition of Nuclear Fuel to be leased to SERI, will receive an assignment of the Trust's rights under the Guaranty, as well as an assignment of the rents and certain of the Trust's other rights under the Lease, pursuant to a Security and Collateral Agency Agreement. Middle South will acknowledge notice and agree to the terms of the assignment.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary

[FR Doc. 89-582 Filed 1-10-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

January 3, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Albany International Corp.—Common stock $.001 Par Value (File No. 7-4102)
Beazer PLC—American Depository Receipts (File No. 7-4103)
Coca-Cola Bottling Co. United Inc.—Class A, Common Stock $.01 Par Value (File No. 7-4104)
Coles Myer Ltd.—American Depository Receipts (File No. 7-4105)
Computerland Corp.—Class A, Common Stock $.001 Par Value (File No. 7-4106)
Sterling Chemicals Inc.—Common Stock $.01 Par Value (File No. 7-4107)
Tandycrafts Inc.—Common Stock $1.00 Par Value (File No. 7-4108)
VM Software Inc.—Common Stock $.01 Par Value (File No. 7-4109)
Compumat Inc.—Common Stock $.01 Par Value (File No. 7-4110)
Home Shopping Network—Common Stock $.01 Par Value (File No. 7-4111)
Cypress Semiconductor Corp.—Common Stock $.01 Par Value (File No. 7-4112)
First City Bancorporation of Texas, Inc.—$5.50 Conv. Pfd. Series B $.01 Par Value (File No. 7-4113)
Georgia Gulf Corp.—Common Stock $.05 Par Value (File No. 7-4114)
Gitano Group Inc.—Common Stock $.10 Par Value (File No. 7-4115)
Intertan, Inc.—Common Stock $1.00 Par Value (File No. 7-4116)
Longview Fibre Co.—Common Stock $7.50 Par Value (File No. 7-4117)
Medusa Corp.—Common Stock No Par Value (File No. 7-4118)
National City Corp.—Common Stock $4.00 Par Value (File No. 7-4119)
Racal Telecom PLC—American Depository Receipts (File No. 7-4120)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 26, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission,

450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-539 Filed 1-10-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

January 3, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Magma Copper Company—Class B Common Stock, $.01 Par Value (File No. 7-4133)

Moore Medical Corporation—Common Stock, $.01 Par Value (File No. 7-4134)

Santa Fe Pacific Pipeline Partners, L.P.—Preferred Depository Units (File No. 7-4135)

Illinois Central Transportation Co.—Common Stock, $.01 Par Value (File No. 7-4136)

Banco Central, S.A.—New American Depository Receipts, No Par Value (File No. 7-4137)

Golden Valley Microwave Foods, Inc.—Common Stock, $.01 Par Value (File No. 7-4138)

Hong Kong Telecommunications, Ltd.—American Depository Shares (File No. 7-4139)

USF&G Pacholder Fund—Common Stock, $.01 Par Value (File No. 7-4140)

Primerica Corporation—Common Stock, $.01 Par Value (File No. 7-4141)

The "Shell" Transport and Trading Company, PLC—Depository Receipts (File No. 7-4142)

Telecom * USA, Inc.—Common Stock, $.01 Par Value (File No. 7-4143)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 26, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-540 Filed 1-10-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

January 3, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Allstate Municipal Income Trust—Shares of Beneficial Interest (File No. 7-4121)

Dean Witter Government Income Trust—Shares of Beneficial Interest (File No. 7-4122)

MFS Government Markets Income Trust—Shares of Beneficial Interest (File No. 7-4123)

Nuveen Municipal Value Fund, Inc.—Common Stock, $0.01 Par Value (File No. 7-4124)

Prudential Strategic Income Fund Inc.—Shares of Beneficial Interest (File No. 7-4125)

Putnam Intermediate Government Income Trust—Shares of Beneficial Interest (File No. 7-4126)

Putnam Master Income Trust—Shares of Beneficial Interest (File No. 7-4127)

Putnam Master Intermediate Income Trust—Common Stock, No Par Value (File No. 7-4128)

Putnam Premier Income Trust—Shares of Beneficial Interest (File No. 7-4129)

Guilford Mills, Inc.—Common Stock, $0.02 Par Value (File No. 7-4130)

National Fuel Gas Company—Common Stock, No Par Value (File No. 7-4131)

Service Merchandise Company, Inc.—Common Stock, $0.05 Par Value (File No. 7-4132)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 26, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-541 Filed 1-10-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: January 5, 1989

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treausry Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Departmental Offices

OMB Number: 1505-0023.

Form Number: Treasury International Capital Form CM.

Type of Review: Extension.

Title: Dollar Deposit and Certificate of Deposit Claims on Banks Abroad.

Description: This report is required by law and is designed to gather timely and

accurate information of international capital movements by collecting data on dollar deposit and certificate of deposit claims held on banks abroad by non-banking enterprises, non-profit institutions and other specified U.S. persons.

Respondents: Businesses of other for-profit.

Estimated Number of Respondents: 175.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 1,050 hours.

OMB Number: 1505-0024.

Form Number: International Capital Form CQ-1; International Capital Form CQ-2.

Type of Review: Extension.

Title: Financial and Commercial Liabilities to, and Claims on, Unaffiliated Foreigners.

Description: This report is required by law and is designed to collect timely accurate information on international capital movements including data on financial and commercial liabilities to and claims on, unaffiliated foreigners held by U.S. non-banking business enterprises, non-profit institutions and other U.S. specified persons.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 475.

Estimated Burden Hours Per Response: 4 hours.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 7,600 hours.

Clearance Officer: Dale A. Morgan (202) 343-0263, Departmental Offices, Room 2224, Main Treasury Building, 15th & Pennsylvania Avenue, NW., Washington, DC 20220.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer

[FR Doc. 89-537 Filed 1-10-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: January 5, 1989

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treausry Department Clearance Office, Department of the Treasury, Room 224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: 9117.

Type of Review: New Collection.

Title: Excise Tax Program Order Blank for Forms and Publications.

Description: Form 9117 allows taxpayers who must file Form 720 returns a systemic way to order additional tax forms and information publications.

Respondents: Businesses or other for-profit, Small businesses or oganizations.

Estimated Number of Respondents: 15,000.

Estimated Burden Hours Per Response: 2 minutes.

Estimated Total Reporting Burden: 500 hours.

Clearance Officer: Garrick Shear (202) 535-5297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer

[FR Doc. 89-538 Filed 1-10-89; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

A Grants Program for Private Not-for-Profit Organizations in Support of International Educational And Cultural Activities

The United States Information Agency (USIA) announces two programs of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The programs are designed to increase mutual understanding between the people of the United States and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175, entitled "A Grants Program for Private, Non-Profit Organizations in Support of International Educational and Cultural Activities," announced in the **Federal Register** June 3, 1987.

Private Sector Organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate.

Latin American Journalists Exchange

The Office of Private Sector Programs proposes the development of two programs, each of which will bring ten journalists from Latin America to the United States for 28 days to give them a greater understanding of the theory and practice of journalism in this country. The target audiences for the first program is the English-speaking Caribbean, although English-speaking journalists from other countries in Latin America will also be included. This program will begin in May 1989. The second program should be conducted in Spanish, since it is aimed at Latin American journalists who are not fluent in English. This program will begin in late June or early July. The participants in both programs will be selected by USIA representatives abroad. The projects will be conceived and executed by a U.S. not-for-profit institution with expertise in the field of journalism. American participants should include reporters, editors, news managers, and academic specialists in journalism. The program design should include a session in Washington, DC, as well as visit to a major news center, such as New York or Los Angeles, and placement in short-term journalism residencies in the surrounding area.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming, and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to develop and conduct the above projects successfully and should also demonstrate a potential for designing programs which will have lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than fifteen days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials, including proposal guidelines. Please refer to these specific programs by name in your letter of interest.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (ATTN: Roy Glover—Latin American Journalists), United States Information Agency, 301 4th Street SW., Washington, DC 20547.

Dated: January 3, 1989.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 89-571 Filed 1-10-89; 8:45 am]

BILLING CODE 8230-01-M

A Grants Program for Private Not-for-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the United States and Chile and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175, entitled "A Grants Program for Private, Non-Profit Organizations in Support of International Educational and Cultural Activities," announced in the **Federal Register** June 3, 1987.

Private Sector Organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate.

Chilean Legislative Leaders

The Office of Private Sector Programs will assist in supporting an exchange that will bring ten potential future legislative leaders from Chile to the United States to provide them with an overview of the American legislative process. The participants will be selected by USIA representatives abroad. The project, scheduled to begin the first weekend in April of 1989 and to last twenty-one days, will be conceived and executed by a U.S. not-for-profit institution with expertise in state and federal legislative affairs in the United States. American participants should include legislators, legislative staff, and academic specialists in the field. The program design may include sessions in Washington, DC, as well as visits to one or two state legislatures. Boston, Albany, and Denver have been suggested as possible sites for visits.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to develop and conduct the above project successfully and should also demonstrate a potential for designing programs which will have lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than fifteen days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials, including proposal guidelines. Please refer to this specific program by name in your letter of interest.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (ATTN: Dr. Roy Glover: Chilean Legislative Leaders), United States Information Agency, 301 4th Street SW., Washington, DC 20547.

Dated: January 4, 1989.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 89-572 Filed 1-10-89; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 7
Wednesday, January 11, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Tuesday, January 17, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding a Federal Reserve Bank's building requirements.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 9, 1989.

William W. Wiles,

Secretary of the Board.

FR Doc. 89-728 Filed 1-9-89; 3:12 pm]

BILLING CODE 6210-01-M

INTER-AMERICAN FOUNDATION BOARD

TIME AND DATE: 6:00-9:30 p.m., January 23, 1989.

PLACE: 1515 Wilson Boulevard, Fifth Floor, Rosslyn, Virginia 22209.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. The Chairman's Report
2. The President's Report
3. Approval of the Minutes of the May 9-10, 1988, Board Meeting
4. Board Audit Committee Report
5. Old Business
6. New Business

CONTACT PERSON FOR MORE INFORMATION: Charles M. Berk, Secretary to the Board of Directors, (703) 841-3812.

Dated: January 9, 1989.

Charles M. Berk,

Sunshine Act Officer.

[FR Doc. 89-727 Filed 1-9-89; 3:08 pm]

BILLING CODE 7025-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Change in Subject of Meeting

The following item is deleted from the previously announced closed Board meeting (Federal Register, Vol. 54, No. 4, page 511, Friday, January 6, 1989) of the National Credit Union Administration on January 12, 1989.

Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9) (A)(ii), and (9) (B).

Earlier announcement of this change was not possible.

The previously announced items were:

1. Approval of Minutes of Previous Closed Meetings.
2. ADP USERS Guide. Closed pursuant to exemption (2).

The meeting will be held at 11:30 a.m., in the Filene Board Room, 7th Floor, 1776 G. Street, NW., Washington, DC 20456.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 89-729 Filed 1-9-89; 3:12 pm]

BILLING CODE 7535-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Wednesday, January 18, 1989.

PLACE: The Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Marine Accident Report: Sinking of U.S. Fishing Vessel WAYWARD WIND in Gulf of Alaska near Kodiak Island, Alaska, January 18, 1988.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,

Federal Register Liaison Officer.

January 9, 1989.

[FR Doc. 89-673 Filed 1-9-89; 12:45 pm]

BILLING CODE 7533-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Tuesday, January 17, 1989 at 2:00 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints:
5. Inv. No. 701-TA-292 (Final) and 731-TA-400, 402, 403, and 406 (Final) (Thermostatically Controlled Appliance Plugs and Probe Thermostats Therefor from Canada, Japan, Malaysia, and Taiwan)—Briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth R. Mason,

Secretary.

January 5, 1989.

[FR Doc. 89-605 Filed 1-6-89; 5:04 pm]

BILLING CODE 7020-02-M

Corrections

Federal Register
Vol. 54, No. 7
Wednesday, January 11, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. 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.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Request for Bilateral Consultations With the Government of Costa Rica

Correction

In notice document 88-30023 beginning on page 52765 in the issue of Thursday, December 29, 1988, make the following correction:

On page 52765, in the 1st column, under **SUPPLEMENTARY INFORMATION**, in the 3rd paragraph, in the 24th line, "698,298 dozen" should read "698,289 dozen".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 239

[INS Number: 1037-88]

Immigration User Fee, Conforming Amendments

Correction

In rule document 89-5 beginning on page 100 in the issue of Wednesday, January 4, 1989, make the following correction:

§ 239.2 [Corrected]

On page 102, in the second column, in amendatory instruction 14, the fourth line should read, "paragraphs (c), (d), and (e) as (b), (c),".

BILLING CODE 1505-01-D

LEGAL SERVICES CORPORATION

45 CFR Part 1610

Use of Funds From Sources Other Than the Corporation

Correction

In proposed rule document 88-30239 beginning on page 46 in the issue of Tuesday, January 3, 1989, make the following correction:

On page 47, in the second column, in the first complete paragraph, the 19th line should read "(1985); Pub. L. No. 100-459, 102 Stat. 2223".

BILLING CODE 1505-01-D

POSTAL SERVICE

39 CFR Part 20

International Mail Manual, Interim Regulations; Domestic Mail Manual, Miscellaneous Changes

Correction

In rule document 88-29903 beginning on page 52697 in the issue of Thursday, December 29, 1988, make the following corrections:

§ 20.2 [Corrected]

1. On page 52697, in the third column, in § 20.2(b), in the sixth line, "Room 8301" should read "Room 8401".

2. On the same page, in the same column, in amendatory instruction 4, in the first line, "§ 30.2" should read "§ 20.3".

BILLING CODE 1505-01-D

federal register

Wednesday
January 11, 1989

Part II

Environmental Protection Agency

40 CFR Parts 148, 268, and 271
Land Disposal Restrictions for Second Third Scheduled Wastes; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 268, and 271

[SWH-FRL-3485-7]

Land Disposal Restrictions for Second Third Scheduled Wastes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to RCRA section 3004(g)(5), EPA is proposing to prohibit the land disposal of certain untreated hazardous wastes listed in 40 CFR 268.11 (the second one-third of the schedule of restricted hazardous wastes, hereafter known as the Second Third). Today's action proposes treatment standards and prohibition effective dates for these wastes, as well as some of the wastes listed in §§ 268.10 and 268.12 (First Third and Third Third). The Agency is also proposing prohibition effective dates for these wastes when they are injected into deep underground wells regulated under 40 CFR 148. If these proposed actions are finalized, Second Third wastes can be land disposed after the applicable effective dates if the respective treatment standards are met or if disposal occurs in units that satisfy the statutory no migration standard.

DATE: Comments on this proposed rule must be submitted on or before February 27, 1989.

ADDRESSES: The public must send an original and two copies of their comments to EPA RCRA Docket (OS-305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Place the Docket Number F-89-LD10-FFFFP on your comments. The EPA RCRA Docket is located in the sub-basement, 401 M Street SW., Washington, DC 20460. The docket is open from 9:00 to 4:00, Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (202) 475-9327. The public may copy a maximum of 50 pages from any regulatory document at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; Telephone: 800-424-9346 (toll-free) or 382-3000 locally.

For general information on specific aspects of this proposed rule, contact Stephen Weil or Rhonda Craig, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4770. For specific information on BDAT treatment standards, contact Jim Berlow or Bob April, Office of Solid Waste (OS-322), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-7917. For specific information on the Underground Injection Control Program and hazardous waste injection wells, contact Bruce Kobelski, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5508. For specific information on capacity determinations or national variances, contact Jo-Ann Bassi, Office of Solid Waste (OS-322), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-7917.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Summary of the Hazardous and Solid Waste Amendments of 1984 and the Land Disposal Restrictions Framework

1. Statutory Requirements

The Hazardous and Solid Waste Amendments (HSWA), enacted on November 8, 1984, prohibit the land disposal of hazardous wastes. Specifically, the amendments specify dates when particular groups of hazardous wastes are prohibited from land disposal unless "it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous" (RCRA sections 3004 (d)(1), (e)(1), (g)(5); 42 U.S.C. 6924 (d)(1), (e)(1), (g)(5)). Congress established a separate schedule for restricting the disposal by underground injection of solvent- and dioxin-containing hazardous wastes, wastes referred to collectively as California list hazardous wastes (RCRA section 3004(f)(2), 42 U.S.C. 6924(f)(2)), and soil and debris resulting from CERCLA sections 104 and 106 response actions and RCRA corrective actions when the soil and debris contains listed spent solvent, dioxin, and California list hazardous wastes.

The amendments also require the Agency to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA section 3004(m)(1), 42 U.S.C. 6924(m)(1)). Wastes that meet treatment standards established by EPA are not prohibited and may be land disposed. In addition, a hazardous waste that does not meet the treatment standard may be land disposed provided the "no migration" demonstration specified in RCRA sections 3004 (d)(1), (e)(1) and (g)(5) is made.

For the purposes of the restrictions HSWA defines land disposal "to include, but not be limited to, any placement of * * * hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave" (RCRA section 3004(k), 42 U.S.C. 6924(k)). Therefore, because HSWA defines land disposal to include underground injection wells, disposal of hazardous wastes in injection wells is subject to the land disposal restrictions.

The land disposal restrictions are effective when promulgated unless the Administrator grants a national variance from the statutory date and establishes a different date (not to exceed two years beyond the statutory deadline) based on "the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available" (RCRA section 3004(h)(2), 42 U.S.C. 6924(h)(2)). The Administrator may also grant a case-by-case extension of the effective date for up to one year, renewable once for up to one additional year, when an applicant successfully makes certain demonstrations (RCRA section 3004(h)(3), 42 U.S.C. 6924(h)(3)). A case-by-case extension can be granted whether or not a national capacity variance has been granted.

The statute also allows treatment of hazardous wastes in surface impoundments that meet certain minimum technological requirements (or certain exceptions thereto). Treatment in surface impoundments is permissible provided the treatment residues that do not meet the treatment standard(s) (or applicable statutory prohibition levels) are "removed for subsequent management within one year of the entry of the waste into the surface

impoundment" (RCRA section 3005(j)(11)(B), 42 U.S.C. 6925(j)(11)(B)).

In addition to prohibiting the land disposal of hazardous wastes, Congress prohibited storage of any waste which is prohibited from land disposal unless "such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal" (RCRA section 3004(j), 42 U.S.C. 6924(j)).

2. Applicability to Injected Wastes

As noted above, disposal of hazardous wastes in injection wells is subject to the provisions of HSWA. The Agency has previously proposed and promulgated regulations pertaining to injected wastes separately from regulations addressing wastes disposed in surface facilities. The Agency chose this approach for several reasons. First, injection of hazardous wastes is controlled by two statutes, RCRA and the Safe Drinking Water Act (SDWA). The regulations governing injection of these wastes have been codified along with other regulations of the Underground Injection Control (UIC) program under the SDWA in Parts 124, 144, 145, 146 and 147 of the Code of Federal Regulations. EPA believes that it is useful to the regulated community and to the State regulators to have requirements regarding restrictions on hazardous waste injection located in the same portion of the Code of Federal Regulations as are other requirements pertaining to injection wells. Second, the statute established a separate schedule for the restrictions on injection of certain wastes.

3. Solvents and Dioxins

Effective November 8, 1986, HSWA prohibited land disposal (except by underground injection into deep wells) of dioxin-containing hazardous wastes numbered F020, F021, F022, and F023 and solvent-containing hazardous wastes numbered F001, F002, F003, F004, and F005 listed in 40 CFR 261.31. (RCRA section 3004 (e)(1), (e)(2), 42 U.S.C. 6924 (e)(1), (e)(2)).

On November 7, 1986, EPA promulgated a final rule (51 FR 40572) implementing RCRA section 3004(e). This rule not only established the general framework for the land disposal restrictions program, but also established treatment standards for the F001–F005 solvent wastes and F020–F023 and F026–F028 dioxin-containing wastes.

4. California List Wastes

Effective July 8, 1987, the statute prohibited further land disposal (except by deep well injection) of the following listed or identified wastes (RCRA section 3001) set out in RCRA sections 3004 (d)(1) and (d)(2) (42 U.S.C. 6924 (d)(1), (d)(2)).

(A) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing free cyanides at concentrations greater than or equal to 1,000 mg/l.

(B) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing the following metals (or elements) or compounds of these metals (or elements) at concentrations greater than or equal to those specified below: (i) Arsenic and/or compounds (as As) 500 mg/l; (ii) Cadmium and/or compounds (as Cd) 100 mg/l; (iii) Chromium (VI and/or compounds (as Cr VI)) 500 mg/l; (iv) Lead and/or compounds (as Pb) 500 mg/l; (v) Mercury and/or compounds (as Hg) 20 mg/l; (vi) Nickel and/or compounds (as Ni) 134 mg/l; (vii) Selenium and/or compounds (as Se) 100 mg/l; and (viii) Thallium and/or compounds (as Tl) 130 mg/l.

(C) Liquid hazardous waste having a pH less than or equal to two (2.0).

(D) Liquid hazardous wastes containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to 50 ppm.

(E) Hazardous wastes containing halogenated organic compounds (HOCs) in total concentration greater than or equal to 1,000 mg/kg.

On July 8, 1987, EPA promulgated a final rule (52 FR 25760) implementing RCRA section 3004(d). This rule established treatment standards for California list wastes containing PCBs and certain HOCs, and codified the statutory prohibition on liquid corrosive wastes. The statutory prohibition is in effect for the California list wastes containing free cyanides, metals, and the California list dilute HOC wastewaters.

5. Disposal of Solvents, Dioxins and California List Wastes in Injection Wells

Section 3004(f) of RCRA required that the Administrator prohibit the disposal of solvents, dioxins and California List wastes in deep wells, effective August 8, 1988, unless such disposal had been determined to be protective of human health and the environment for as long as the wastes remained hazardous or unless a variance had been granted under RCRA section 3004(h). On July 26, 1988, the Agency established effective dates for the prohibition on injection of solvents and dioxin wastes (53 FR 28118). In another regulation, effective August 6, 1988 and published August 16, 1988 in the **Federal Register**, the Agency established effective dates for the prohibition on injection of California List wastes (53 FR 30908).

6. Scheduled Wastes

The amendments required the Agency to prepare a schedule by November 8, 1986 for restricting the land disposal of all hazardous wastes, including underground injected wastes, listed or identified as of November 8, 1984 in 40 CFR Part 261, excluding solvent- and dioxin-containing wastes and California list wastes covered under the schedule set by Congress. The schedule, based on a ranking of the listed wastes that considers their intrinsic hazard and their volume, is to ensure that prohibitions and treatment standards are promulgated first for high volume hazardous wastes with high intrinsic hazard before standards are set for low volume wastes with low intrinsic hazard. The statute further requires that these determinations be made by the following deadlines:

(A) At least one-third of all listed hazardous wastes by August 8, 1988.

(B) At least two-thirds of all listed hazardous wastes by June 8, 1989.

(C) All remaining listed hazardous wastes and all hazardous wastes identified as of November 8, 1984, by one or more of the characteristics defined in 40 CFR Part 261 by May 8, 1990.

If EPA fails to set a treatment standard by the statutory deadline for any hazardous waste in the first third or second third of the schedule, the waste may be disposed in a landfill or surface impoundment provided "such facility" is in compliance with the minimum technological requirements specified in RCRA section 3004(o) for new facilities (RCRA section 3004(g)(6)). (**Note.**—In the August 17, 1988 First Third final rule, EPA interpreted the term "such facility" in 3004(g)(6) to refer to the individual surface impoundment or landfill unit.) In addition, prior to disposal, the generator must certify to the Administrator that he has investigated the availability of treatment capacity and has determined that disposal in such landfill or surface impoundment is the only practical alternative to treatment currently available to the generator. This restriction on the use of landfills and surface impoundments applies until EPA sets a treatment standard for the waste or until May 8, 1990, whichever is sooner. Other forms of land disposal, including underground injection, are not similarly restricted and may continue to be used for disposal of untreated wastes until EPA promulgates a treatment standard or until May 8, 1990, whichever is sooner. If the Agency fails to set a treatment standard for any scheduled hazardous waste by May 8, 1990, the

waste is automatically prohibited from all forms of land disposal after that time unless the waste is the subject of a successful "no migration" demonstration (RCRA section 3004(g)(5), 42 U.S.C. 6924(g)(5)). (Also, the May 8, 1990 effective date may be extended under RCRA section 3004(h)(2) for certain Second Third and Third Third wastes, and until August 8, 1990 for certain First Third wastes.) On May 28, 1986, EPA promulgated the schedule for setting treatment standards for the listed and identified hazardous wastes (51 FR 19300). All wastes that are identified as hazardous by characteristic are scheduled in the Third Third, as required by RCRA. This schedule is incorporated in 40 CFR 268.10, 268.11, and 268.12.

For the scheduled wastes, the statute does not provide different deadlines for restriction of underground injected versus surface land disposed wastes. However, the Agency did propose and promulgate First Third regulations for surface disposed and injected wastes on separate dates. The First Third final rule, promulgated on August 8, 1988 and published in the **Federal Register** on August 17, 1988 (53 FR 31138), set out the conditions under which wastes included in the first one-third of the schedule of restricted hazardous wastes listed in 40 CFR 268.10 may continue to be land disposed (other than by injection). The final regulations published August 26, 1988 (53 FR 30908) include effective dates for the prohibition of injection of certain First Third wastes. In addition, the Agency has proposed effective dates for the prohibition on injection of another group of First Third wastes on October 26, 1988 (53 FR 41601). Today's notice proposes the conditions under which wastes included in the second one-third of the schedule of restricted hazardous wastes listed in 40 CFR 268.11 may continue to be land disposed. It applies to all forms of land disposal, including injection. It also proposes treatment standards for some restricted hazardous wastes listed in §§ 268.10 and 268.12 (First Third and Third Third wastes).

7. Newly Identified and Listed Wastes

RCRA requires the Agency to make a land disposal prohibition determination for any hazardous waste that is newly identified or listed in 40 CFR Part 261 after November 8, 1984 within six months of the date of identification or listing (RCRA section 3004(g)(4), 42 U.S.C. 6924(g)(4)). However, the statute does not provide for an automatic prohibition of the land disposal of such wastes if EPA fails to meet this deadline.

B. Regulatory Framework

By way of preface, we note that the following description of existing rules is for the readers' convenience, and is not intended to reopen any of these rules for public comment. The November 7, 1986 final rule (51 FR 40572) established the regulatory framework for implementing the land disposal restrictions program. Some changes to the framework were made in a July 8, 1987, final rule (52 FR 25760) that prohibited the land disposal of California list wastes, as well as in the August 17, 1988 final rule. Regulations specifying how the framework applies to injected wastes were promulgated July 26, 1988 (53 FR 28118). The following discussion summarizes the major provisions of the land disposal restrictions framework.

1. Applicability

The land disposal restrictions apply prospectively to the affected wastes. In other words, hazardous wastes land disposed after the applicable effective dates are subject to the restrictions, but wastes land disposed prior to the effective dates are not required to be removed or exhumed for treatment (51 FR 40577). Similarly, only surface impoundments receiving restricted wastes after the applicable deadline are subject to the restrictions on treatment in surface impoundments contained in § 268.4 and 3005(j)(11). Also, the storage restrictions apply to wastes placed in storage after the effective dates.

The provisions of the land disposal restrictions program apply to wastes produced by generators of greater than 1,000 kilograms of hazardous waste as well as small quantity generators of 100 to 1,000 kilograms of hazardous waste (or greater than 1 kilogram of acute hazardous waste) in a calendar month. However, wastes produced by small quantity generators of less than 100 kilograms of hazardous waste (or less than 1 kilogram of acute hazardous waste) per calendar month are conditionally exempt from RCRA, including the land disposal restrictions (see 40 CFR 268.1).

The land disposal restrictions apply to both interim status and permitted facilities. The requirements of the land disposal restrictions program supersede 40 CFR 270.4(a), which currently provides that compliance with a RCRA permit constitutes compliance with Subtitle C of RCRA. Therefore, even though the requirements may not be specified in the permit conditions, all permitted facilities are subject to the restrictions.

2. Treatment Standards

By each statutory deadline the Agency must establish the applicable treatment standards under 40 CFR Part 268 Subpart D for each restricted hazardous waste (RCRA section 3004(m)(1)). After the applicable effective dates, restricted wastes may be land disposed in Subtitle C facilities if they meet the treatment standards. If EPA does not promulgate treatment standards by the statutory deadlines, such wastes are prohibited from land disposal (with the exception of first-third and second-third ranked hazardous wastes, which are subject to the soft hammer provisions of RCRA section 3004(g)(6)).

A treatment standard is based on the performance of the best demonstrated available technology (BDAT) to treat the waste (51 FR 40578). EPA may establish treatment standards either as specific technologies or as performance standards based on the performance of BDAT technologies. Compliance with performance standards may be monitored by measuring the concentration level of the hazardous constituents (or in some circumstances, indicator pollutants) in the waste, treatment residual, or in the extract of the waste or treatment residual. When treatment standards are set as performance levels, the regulated community may use any technology not otherwise prohibited (such as impermissible dilution) to treat the waste to meet the treatment standard. Treaters thus are not limited to only those technologies considered in determining the treatment standard. However, when treatment standards are expressed as specific technologies, such technologies must be employed.

3. National Variances From the Effective Dates

The Agency has the authority to grant national variances from the statutory effective dates, not to exceed two years, if there is insufficient alternative protective treatment, recovery or disposal capacity for the wastes (RCRA section 3004(h)(2)). To make capacity determinations, EPA compares the nationally available alternative treatment, recovery, or protective disposal capacity at permitted and interim status facilities which will be in operation by the effective date with the quantity of restricted waste generated. If there is a significant shortage of such capacity nationwide, EPA will establish an alternative effective date based on the earliest date such capacity will be available. During the period such a

capacity variance is in place, if the waste is disposed in a landfill or surface impoundment, such disposal may be made only in a unit meeting the minimum technological requirements of RCRA section 3004(o) (53 FR 31186 and § 268.5(h)(2)). It should be noted, however, that if a waste subject to a national capacity variance is treated to meet the applicable treatment standard, it may be disposed in a Subtitle C landfill or surface impoundment regardless of whether the unit meets minimum technological requirements.

4. Case-By-Case Extensions of the Effective Dates

The Agency will consider granting up to a one-year extension (renewable only once) of a ban effective date on a case-by-case basis. The requirements outlined in 40 CFR 268.5 must be satisfied, including a demonstration that adequate alternative treatment, recovery, or disposal capacity for the petitioner's waste cannot reasonably be made available by the effective date due to circumstances beyond the applicant's control, and that the petitioner has entered into a binding contractual commitment to construct or otherwise provide such capacity. During the period that such a case-by-case extension is in place, the waste may be land disposed only in a unit meeting the minimum technological requirements of RCRA section 3004(o).

5. "No Migration" Exemptions From the Restrictions

EPA has the authority to allow the land disposal of a restricted hazardous waste which does not meet the treatment standard provided that the petitioner demonstrates that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the waste remains hazardous (40 CFR 268.6). If a petition is granted, it can remain in effect for no longer than ten years for disposal in interim status land disposal units, and for no longer than the term of the RCRA permit for disposal in permitted units (40 CFR 268.6(h)).

Section 148.20 (promulgated on July 26, 1988, see 53 FR 28118) outlines in detail the Agency's plan for implementing the "no migration" provisions of RCRA with respect to injected wastes. Briefly, a petitioner is required, through modeling, to demonstrate that there is no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This demonstration can be made in one of two ways: the use of flow and transport models to show that injected fluids will not migrate vertically out of the injection zone for a period of 10,000 years; or, use of geochemical modeling to show that the waste is transformed so it will become nonhazardous at the edge of the injection zone. Also, a showing must be made that the well was in compliance with the substantive area of review, corrective action, and mechanical integrity requirements of Part 146.

6. Variances From the Treatment Standards

EPA established the variance from the treatment standard to account for those wastes that can not be treated to meet the applicable treatment standards, even if well-designed and well-operated BDAT treatment systems are used (40 CFR 268.44). This variance is somewhat analogous to the fundamentally different factors variance in the Agency's Clean Water Act effluent limitations guidelines regulation. Among other things, petitions must demonstrate that the waste is significantly different from the wastes evaluated by EPA in establishing the treatment standard and the waste cannot be treated to the level or by the method specified by the treatment standard (51 FR 40605). This variance procedure can result in the establishment of a new treatability group and corresponding treatment standard that applies to all wastes meeting the criteria of the new waste treatability group. A site-specific variance from the treatment standard may also be granted administratively (without rulemaking), but the variance has no generic applicability to other wastes at other sites (53 FR 31199).

7. Exemption for Treatment in Surface Impoundments

Wastes that would otherwise be prohibited from one or more methods of land disposal may be treated in a surface impoundment that meets certain technological requirements (40 CFR 268.4(a)(3)) as long as treatment residuals that do not meet the applicable treatment standard (or statutory prohibition levels where no treatment standards are established) are removed for subsequent management within one year of entry into the impoundment and are not placed into any other surface impoundment. The owner or operator of such an impoundment must certify to the Regional Administrator that the technical requirements have been met and must also submit a copy of the waste analysis plan that has been modified to provide for testing treatment residuals in accordance with section 268.4 requirements.

8. Storage of Prohibited Wastes

Storage of prohibited wastes is prohibited except where storage is solely for the purpose of accumulating sufficient quantities of wastes to facilitate proper treatment, recovery, or disposal (40 CFR 268.50). A facility that stores a prohibited waste for more than one year bears the burden of proof that such storage is solely for this purpose. *Id.* EPA bears the burden of proof if the Agency believes that storage of a restricted waste by a facility for up to one year is not for the purpose of accumulating sufficient quantities to facilitate proper treatment, recovery, or disposal. *Id.*

9. The "Soft Hammer" Provisions

The First Third and Second Third wastes for which EPA has not promulgated treatment standards can continue to be disposed in landfill and surface impoundment units, provided certain demonstrations are made, and provided these units meet the minimum technology requirements of section 3004(o) (see 53 FR 31181, August 17, 1988), until May 8 1990, or until EPA promulgates treatment standards, whichever is sooner. Other types of land disposal are not restricted until EPA promulgates treatment standards or until May 8, 1990.

II. Summary of Today's Proposed Rule

Today's notice describes the Agency's proposed approach to implementing RCRA section 3004(g) requirements with respect to certain listed hazardous wastes included in 40 CFR 268.11 (as well as §§ 268.10 and 268.12). The Agency is required to promulgate regulations establishing conditions under which these Second Third wastes may be land disposed by the statutory deadline of June 8, 1989.

A. Applicability of Proposed Treatment Standards

Today the Agency is proposing treatment standards and effective dates for only certain Second Third wastes. Wastes listed in § 268.11 for which EPA does not establish treatment standards or effective dates will be subject to the "soft hammer" provisions that allow continued land disposal until May 8, 1990 or until treatment standards or extensions to the effective date are promulgated, whichever is sooner (40 CFR 268.8).

The Agency is also proposing treatment standards for certain First Third "soft hammer" wastes, as well as certain Third Third wastes, to become effective immediately upon promulgation. Although the few Third

Third wastes included in today's proposal were not originally scheduled to be regulated until May 8, 1990, the Agency is not precluded from proposing or promulgating treatment standards for any wastes ahead of schedule (see RCRA section 3004(g)(1), "Not later than * * *"). The treatment standards being proposed today will also apply to wastes that are disposed by deep well injection.

The Agency is proposing to amend the schedule so that certain Second Third wastewater residues, derived-from wastes, mixtures of hazardous/radioactive wastes are moved to the third third of the schedule, as was done in the First Third final rule (see 53 FR 31215, § 268.12 (b), (c), and (d)). The Agency is proposing to move wastewater residues resulting from well-designed and well-operated treatment methods (metals recovery, metals precipitation, cyanide destruction, carbon adsorption, chemical oxidation, steam stripping, biodegradation, and incineration or other direct thermal destruction) for which EPA has not promulgated wastewater treatment standards to the Third Third, in order that residues from substantial treatment of these "soft hammer" wastes may be further treated in land disposal units that do not meet minimum technology requirements. As was explained in the First Third final rule (53 FR 31184), the Agency finds justification for such action in that wastes that have undergone substantial treatment to levels that may ultimately satisfy treatment standards should not be precluded from further treatment in polishing or advanced biological treatment units (RCRA sections 3005 (j)(3) and (j)(13)) that are substantially protective of human health and the environment.

The Agency is also proposing to move leachate derived from treatment, storage, or disposal of Second Third wastes for which EPA did not promulgate wastewater treatment standards, and contaminated ground water that contains such wastes, to the Third Third. The Agency is taking this action, as was explained in the First Third final rule (53 FR 31184), because these wastes may be highly diluted so that treatment in RCRA section 3005 (j)(3) and (j)(13) impoundments may be appropriate.

Likewise, the Agency is proposing to move Second Third wastes that are mixed hazardous/radioactive wastes to the Third Third. As was explained in the First Third final rule (53 FR 31147), there are relatively small volumes of such waste mixtures being generated, so such waste is more appropriately addressed in the Third Third.

B. Best Demonstrated Available Technologies (BDAT)

Today's proposed rule defines the waste treatability groups by waste codes and identifies the Best Demonstrated Available Technology (BDAT) for each waste code (see Section III.A.). Treatment standards applicable to each treatability group are based on the performance levels achievable by the corresponding BDAT identified for each treatability group. Any technology not otherwise prohibited (i.e., impermissible dilution) may be used to meet the concentration-based treatment standards. Where treatment standards are expressed as a technology, the waste must be treated using the specified technology prior to land disposal.

Following are tables listing BDAT for the wastes for which treatment standards are proposed in today's rule:

1. *Incineration is identified as BDAT for the waste codes:*

F010 >5% oil/grease	P041 nonwastewater
F024	P043 nonwastewater
K009 nonwastewater	P044 nonwastewater
K010 nonwastewater	P062 nonwastewater
K011 nonwastewater	P071
K013 nonwastewater	P085 nonwastewater
K014 nonwastewater	P089
K023	P094
K027 nonwastewater	P097
K028	P109 nonwastewater
K036 wastewater	P111 nonwastewater
K038 nonwastewater	U028
K039 nonwastewater	U058 nonwastewater
K040 nonwastewater	U069
K043	U087 nonwastewater
K093	U088
K094	U102
K113 nonwastewater	U107
K114 nonwastewater	U190
K115 nonwastewater	U221
K116 nonwastewater	U223
P039	U235
P040 nonwastewater	

2. *Carbon Adsorption is identified as BDAT for the waste codes:*

K027 wastewater	P062 wastewater
K113 wastewater	P085 wastewater
K114 wastewater	P109 wastewater
K115 wastewater	P111 wastewater
K116 wastewater	U058 wastewater
P040 wastewater	U087 wastewater
P041 wastewater	U221 wastewater
P043 wastewater	U223 wastewater
P044 wastewater	

3. *No Land Disposal Based on Recycling is identified as BDAT for the waste codes:*

K002 nonwastewater	K008 nonwastewater
K003 nonwastewater	K095 nonwastewater
K004 nonwastewater	K096 nonwastewater
K006 nonwastewater	

4. *No Land Disposal Based on No Generation is identified as BDAT for the waste codes:*

K005 nonwastewater	K029 nonwastewater
K007 nonwastewater	

5. *No Standards for the Second Third waste codes:*

K041	K098
K042	K105
K097	

6. *Electrolytic Oxidation followed by Alkaline Chlorination, Precipitation, Filtration, and Stabilization of Metals is identified as BDAT for the waste codes:*

F006	F019
F012	

7. *Wet Air Oxidation Followed by Precipitation and Filtration is Identified as BDAT for the waste codes:*

F007	P063
F008	P074
F009	P098
F011	P099
P013	P104
P021	P106
P029	P121

8. *Wet Air Oxidation followed by Biological Treatment is identified as BDAT for the waste codes:*

K011 wastewater	K014 wastewater
K013 wastewater	

C. Waste Analysis Requirements

The Agency is today proposing to incorporate the approach to waste analysis promulgated in the First Third final rule (53 FR 31146). Where BDAT is a destruction or removal technology, a total waste analysis is required because it is most appropriate for measuring such destruction or removal. The legislative history also indicates a strong preference for treatment that destroys hazardous constituents, (see, e.g., 130 Cong. Rec., 59179, daily ed. July 25, 1984, statement of Senator Chaffee), and the only reliable way to verify that destruction has occurred is to measure the total waste. Similarly, where BDAT is identified as an immobilization technology such as stabilization, analysis of a TCLP waste extract is required because it is the most appropriate measure of immobilization. In cases where both technologies are identified as BDAT, both types of waste analyses are required.

In order for the initial generator to determine whether his waste meets the applicable treatment standard as generated, he should analyze the total waste if a treatment standard is in § 268.41, or he should analyze a waste extract if the treatment standard is found in § 268.43 (see proposed

§ 268.34(f)). The generator may also make this determination based on his knowledge of the waste (see § 268.7(a)), provided there is a reasonable basis for doing so (for example, the generator uses so little of a key constituent that it could not be found in the waste at levels exceeding a treatment standard). The Agency has discussed this principle in past rulemakings, and is not reopening it for comment here.

The Agency notes that a mistake was made in § 268.33(g) of the regulatory language of the First Third final rule. The Agency inadvertently omitted language that allowed the initial waste generator to use knowledge of the waste for purposes of determining whether a hazardous waste exceeds the applicable treatment standards. It was not the intent of the Agency to change the waste analysis provision of § 268.7(a) to disallow use of generator knowledge of the waste. This error will be corrected in a technical correction notice for the First Third.

D. Nationwide Variances From the Effective Date

Due to lack of sufficient alternative protective treatment or recovery capacity, EPA is proposing a national capacity variance for soil and debris contaminated with some of the waste codes covered by today's notice. A variance is also proposed for certain wastes disposed by underground deep well injection.

Such determinations are based on a comparison of the volumes of wastes requiring treatment to the amount of treatment capacity available for such treatment (see Section III.B.1. and III.B.3.). Although EPA does not require that BDAT technologies be used to meet the applicable treatment standards, capacity is determined based on technologies identified as BDAT.

The Agency is proposing to grant a two-year national variance for soil and debris contaminated with wastes for which BDAT is incineration (see paragraph B. of this section) and for the following wastes that are disposed by means of underground injection:

1. Wastes Subject to a National Capacity Variance Until August 8, 1990 (or until capacity becomes available, whichever is earliest): F007, K011, K013, K014.

2. Wastes Subject to a National Capacity Variance Until June 8, 1991 (or until capacity becomes available, whichever is earliest): K009, K010.

E. Applicability of Today's Proposed Rule to Class I–H Hazardous Waste Injection Wells Regulated Under 40 CFR 148

The Agency has previously proposed and promulgated regulations and effective dates for underground injected hazardous wastes covered under RCRA sections 3004 (f) and (g) separately from regulations addressing wastes disposed in surface facilities. EPA is today addressing all methods of land disposal of wastes in today's proposal, including injection wells regulated jointly under the Safe Drinking Water Act and RCRA.

F. Treatment Standards for Prohibited Wastes that are Mixed with Non-Prohibited Wastes

One matter that has come to the Agency's attention concerns the status of prohibited wastes that are mixed with other wastes that are not prohibited, for example, nonhazardous wastes, or hazardous wastes that are not yet prohibited such as wastes in the third third of the Schedule or newly identified or listed wastes. The rules are clear that the prohibited wastes must still meet all applicable treatment standards. That is, prohibited wastes are not exempted from the land disposal prohibitions when they are mixed with other wastes (or any other materials, for that matter). Were this not the case, land disposal prohibitions would be without meaning since they could be evaded by the simple expedient of mixing with a non-prohibited waste.

Prohibited wastes are sometimes mixed with other materials in the course of treatment. If the prohibited waste is no longer capable of being treated to meet the treatment standard after mixing, it is possible that an improper form of treatment is occurring, i.e., one that makes the prohibited waste more difficult to treat. Certainly, intentional mixing that is intended to evade a treatment standard is impermissible. (See 52 FR 25766, July 8, 1987, "[a]rtificial aggregation points designed to avoid a prohibition certainly would not be considered legitimate * * *") EPA realizes and acknowledges, however, that mixing wastes can be a normal part of treatment. *Id.* Therefore, to the extent that such mixing occurs and can be determined to be a legitimate part of the treatment process, the mixture could be eligible for a treatability variance pursuant to § 268.44. Part of the demonstration, however, would be whether mixing has made the prohibited waste more difficult to treat, and if so, whether the treatment method utilized is still legitimate. (See response to comments number 10–U–1, page 411, RCRA LDR–9 docket, August 8, 1988.)

III. Detailed Discussion of Today's Proposed Rule

A. Determination of Treatability Groups and Development of Treatment Standards

Sections III.A.1. through III.A.11. of today's preamble present discussions on the determination of treatability groups and the development of treatment standards for RCRA hazardous wastes, including those identified as Second Third wastes. Sections III.A.1. through III.A.7. present an overview of the general procedures that the Agency follows for these determinations. The Agency is not reopening the issues presented in sections III.A.1. through III.A.7. for public comment, but is merely restating the Agency's positions on these issues.

In Section III.A.8. of today's preamble, the Agency is proposing treatment standards for many of the Second Third wastes, some of the First Third wastes (that have not been previously proposed), and several Third Third wastes. In addition, this section includes a discussion of the status of the development of standards for all Second Third wastes. Sections III.A.9. through III.A.11. present various approaches for developing treatment standards for all of the remaining wastes. The Agency is requesting comments and data that may be used in the development of the treatment standards for all wastes identified in sections III.A.8. through III.A.11. of this preamble.

1. Waste Treatability Groups

The Agency uses the individual listed waste codes as the starting point for developing waste treatability groups for all RCRA hazardous wastes. Where wastes represented by different codes appear to be able to be treated to similar concentrations using identical technologies the Agency combines the codes into one treatability group. Initial treatability group decisions are based primarily on whether the wastes are generated by similar industries or from similar processes. The Agency believes that such groupings can be based on limited data because of the high likelihood that the waste characteristics that affect treatment performance will be similar for these different wastes.

The treatment standards in today's proposed rule generally contain constituent concentrations for "wastewaters" and constituent concentrations for "nonwastewaters". The treatment standards apply to the prohibited waste as well as to all residuals generated by treating the original prohibited waste. Therefore, all

solids generated from treatment of a particular waste must meet the applicable nonwastewater treatment standards and all wastewaters generated from treatment of this waste must meet the wastewater treatment standards.

For purposes of this proposed rule, the Agency defines wastewaters as those wastes (listed wastes, wastes generated as a result of the mixture rule, or wastes generated as a result of the derived-from rule) that contain less than 1% total organic carbon (TOC) and less than 1% total suspended solids, except for those wastes identified as F001, F002, F003, F004, and F005. (See 51 FR 40579 for the definition of a solvent-water mixture). Those wastes, "mixture" wastes, or "derived-from" wastes, that do not meet these criteria are defined as nonwastewaters. It is not permissible to dilute or perform partial treatment on a waste in order to switch the applicability of a nonwastewater standard to a wastewater standard (or vice versa).

2. Identification of BDAT

A detailed discussion of the methodology for identification of BDAT is provided in the November 7, 1986 final rule (51 FR 40572). As the first step in the development of BDAT treatment standards, EPA screens the available treatment data for a particular treatability group with regard to the design and operation of the system, the quality assurance/quality control analyses of the data, and the analytical tests used to assess treatment performance. This screening recognizes the fact that the analytical test that best measures treatment performance depends on the treatment technology used (e.g., a total constituent analysis best measures the destruction of organics by incineration, the TCLP analysis best measures the immobilization of metal constituents by stabilization). EPA is able to emphasize the design and operation of the particular treatment systems because its field tests have been designed to gather detailed data to support these analyses.

In the next step, EPA adjusts all treated data values based on the analytical recovery, in order to take into account analytical interferences associated with the chemical makeup of the treated sample. For example, a treated residual data point of 0.2 mg/kg with an analytical recovery of 50 percent would be adjusted to 0.4 mg/kg. After adjusting the data, EPA averages the performance values for the various treatment operations. The mean values are then compared, using the analysis of variance test (ANOVA) described in the November 7, 1986 final rule (51 FR 40591), to determine if one technology performed significantly better than the other.

3. Compliance with Performance Standards

All of the treatment standards in today's proposed rule reflect performance achieved by the Best Demonstrated Available Technology (BDAT). As such, compliance with these standards only requires that the treatment level be achieved prior to land disposal. It generally does not require the use of any particular treatment technology. Today's proposal contains an exception to this general principle, based on difficulties with analysis of the treatment residue (see the discussion of K027 and related wastes below). While dilution of the waste as a means to comply with the standard is prohibited, wastes that are generated in such a way as to naturally meet the standard can be land disposed without treatment. With the exception of treatment standards that prohibit land disposal and treatment standards for K027 and related wastes, all treatment standards proposed today are expressed as concentration levels.

It is important to note that EPA's position on compliance with concentration-based performance standards and the identification of a technology as BDAT has sometimes been misinterpreted. The Agency emphasizes that the technologies identified as BDAT are simply those technologies which EPA utilized to develop the waste specific concentration-based performance standards. Any applicable treatment or recycling technology (or combination of technologies), unless prohibited (such as dilution), can be used to achieve these standards unless that technology is considered land disposal (such as land treatment).

For all organic constituents and total cyanides, treatment standards are based on the total constituent concentration found in the treated waste. Since these technologies are designed to destroy the hazardous organic constituents (and cyanides), the Agency maintains that the best measure of treatment performance is the one that reflects the extent to which the various organic compounds (and cyanides) have been destroyed. [Note: The land disposal restrictions for solvent waste codes F001–F005 (51 FR 40572) requires use of the TCLP value as a measure of performance. At the time that the treatment standards for F001–F005 were promulgated, useful data were not available on total constituent concentrations in treated residuals and, as a result, the TCLP was considered to be the best available measure of performance.]

In cases where treatment standards for metals are based on stabilization, the use of the TCLP is required as the measure of the performance of the treatment technology because the Agency maintains that the TCLP best reflects the extent to which the mobility of most metals can be chemically or physically minimized. Where treatment standards are based on multiple treatment processes due to the presence of organics and metals, the waste has to meet both total constituent concentrations for organics and TCLP concentrations for metals prior to land disposal.

4. Applicability of Treatment Standards to Treatment Residues Identified as "Derived-From" Wastes

In a number of instances in today's proposed rule, BDAT consists of an operation or series of treatment operations that generate additional waste residues. For example, BDAT for K011 is based on incineration followed by stabilization. Incineration generates two residues that may require further treatment, namely the ash residues and the scrubber waters. Treatment of the scrubber waters to remove metals may generate additional inorganic residues which may also require stabilization. Ultimately these additional wastes may be land disposed, so they must meet the same standards as the stabilized ash residues. With respect to these additional wastes, the Agency wishes to emphasize that all of the residues from treating the original listed wastes are likewise considered to be the listed waste by virtue of the derived-from rule contained in 40 CFR 261.3(c)(2). Consequently, all wastes generated in the course of treatment are prohibited from land disposal unless they satisfy the treatment standard or are otherwise exempted from the prohibition through a no-migration petition or by a capacity variance.

Tests have not been performed in all cases on wastes that can result from every part of the treatment train. However, the treatment standards are based on treatment of the most concentrated form of the waste, consequently, the Agency believes that the less concentrated wastes generated in the course of treatment can be treated to meet these standards.

In the First Third Final Rule (53 FR 31146–31150, August 17, 1988), the Agency presented its rationale for maintaining that landfill leachate is

derived from the wastes disposed in the landfill and that leachate must meet the appropriate wastewater treatment standards for all regulated constituents prior to land disposal.

Subsequent to promulgation of the First Third Final Rule, the Circuit Court of Appeals for the District of Columbia Circuit stayed the applicability of the First Third rule to leachate residues from treating such leachate and groundwater contaminated with leachate. (Order of August 18, 1988.) The Court clarified that other prohibited wastes that are mixed with leachate must still meet treatment standards "to the extent possible". (Order of September 23, 1988)

In today's rule, EPA solicits further comment on the issue of treatability of multi-source leachate. The Agency specifically solicits further data on interfering agents in multi-source leachate, including data on whether metals and organics may impede sequential treatment. The Agency also solicits data on multi-source leachate treatment capacity, although it notes that it has set in motion a means of alleviating practical problems due to drafting of permits in terms of specific waste codes. 53 FR 46474 (November 17, 1988).

Pending further study, therefore, the Second Third rule treatment standards and effective dates would also apply to leachate derived from these wastes.

5. Transfer of Treatment Standards

In today's proposed rule, some treatment standards are not based on testing the performance of BDAT on the specific waste subject to the treatment standard. Instead, the Agency determined that the constituents present in the waste can be treated to the same performance levels as observed in other wastes on which testing was performed. EPA believes that transferring treatment performance data to establish treatment standards for untested wastes or constituents is technically valid when the untested wastes are generated from similar industries and/or similar processing steps or when the constituents have similar chemical and physical properties. Transfer of treatment standards to wastes from similar processing steps requires little formal analysis because of the likelihood that similar production processes will produce a waste matrix with similar characteristics.

In cases where only the industry is similar, EPA closely examines the waste characteristics prior to concluding that the untested waste constituents can be treated to levels associated with tested wastes through a two-step analysis. First, EPA reviews the available waste characteristic data to identify those parameters which are expected to affect treatment selection. EPA has identified some of the most important constituents (and other parameters) to select the treatment technology appropriate for a given waste. When an individual analysis suggests that an untested waste can be treated with the same technology as a waste for which treatment performance data are already available, a more detailed list of constituents is analyzed that represent some of the most important waste characteristics which the Agency believes will affect the performance of the technology. By examining and comparing these characteristics, the Agency determines whether the untested wastes will achieve the same level of treatment as the tested waste. Where the Agency determines that the untested waste can be treated as well as the tested waste, the treatment standards can be transferred. A detailed discussion of this transfer process can be found in the BDAT background documents for each waste or waste treatability group.

6. No Land Disposal as the BDAT Treatment Standard

EPA is proposing a treatment standard of "No Land Disposal" for several wastes. This standard is analogous to the no discharge standard established as Best Available Technology (BAT) under the Clean Water Act's effluent guideline program. A "No Land Disposal" standard usually indicates that after examining available data, the Agency has identified that: (1) The waste can be totally recycled without generating a prohibited residue; (2) the waste is not currently being land disposed; or (3) the waste is no longer being generated and is not anticipated to be generated during a RCRA or CERCLA corrective action.

For any wastes having a proposed treatment standard of "No Land Disposal", EPA solicits comments on the potential for disposal of that particular waste. EPA is especially concerned with such standards because, once promulgated, these standards make it illegal to land dispose these wastes. Should it be revealed after promulgation of the "No Land Disposal Based on No Generation" treatment standard that these wastes are being generated and land disposed, the generator may apply for a variance from the treatment standard. The variance petition should clearly indicate that the waste is being generated contrary to EPA's original assessment, and should present treatment data to be used to establish a new treatment standard (40 CFR 268.44). However, during the period the variance is being processed, the waste may not be land disposed, notwithstanding the inaccuracy of the original assessment that the waste was not being generated. Should commenters provide information that one or more of the premises used to determine the "No Land Disposal" standard are not valid, the treatment standard may not be finalized and land disposal of the waste is usually subject to the "soft hammer" provisions. Prior to May 8, 1990, EPA intends to develop and propose treatment standards for these wastes. If no specific comments are received refuting the validity of the basis for the "No Land Disposal" standard, EPA generally proceeds with the promulgation of the standard as proposed.

The "No Land Disposal" standard does not imply that the waste is so extremely hazardous that it can not be safely land disposed or handled; rather, it means that there is no need to land dispose the waste because alternative forms of management exist.

Today's notice does not propose the treatment standard of "No Land Disposal" for any wastewaters. The basis of this standard, as previously proposed for other wastes, was that since no nonwastewater forms of certain listed wastes were being generated, no wastewater forms were being generated. However, the Agency now has information indicating that wastewater forms of many of the listed wastes are or can be generated as leachates from previous land disposal. Other wastewater forms of listed wastes that may be generated include those wastewaters being generated at CERCLA sites, during RCRA corrective actions, and as residuals from treatment processes such as dewatering. Since generation of wastewaters is anticipated to occur, the premise of no generation as a basis for the treatment standard of "No Land Disposal" is invalid.

7. Additional Considerations in Setting Treatment Standards

The Agency has decided to reiterate its response to certain comments received during the comment period for the First Third proposed rule regarding treatment standard development. This discussion is included in today's proposed rule solely for the sake of clarification. EPA is not reopening the comment period on these issues.

a. *Use of Extraction Procedure (EP) Toxicity Data.* The Agency believes that the results from use of the TCLP do not compare with EP results for all metals in all wastes, even though in some special instances, specific metals within specific

waste matrices have been shown to yield statistically similar results using the TCLP and the EP. However, until a statistical relationship for specific constituents in treated wastes can be demonstrated, the Agency is reluctant to use data generated from the EP when calculating treatment standards.

Data to correlate EP and TCLP tests for certain stabilized wastes were submitted to the Agency. The preliminary analysis shows a correlation for some constituents in these specific stabilized wastes. Additional data submitted prior to the final rulemaking will be considered by the Agency in the development of the treatment standards provided they do not lack important information that is necessary for evaluation of the performance of the process. The data must represent a well operated treatment system. Typically data on stabilization technologies lack information on the type of binding agents used, the ratios of binder to waste, the leachability of the untreated waste, the setting and curing conditions, and the waste characteristics that are anticipated to affect performance of the technology. In addition, data generally lack specific paired analysis which would allow comparison of untreated samples with specific treated samples. This information is necessary to evaluate the effectiveness of the treatment and to assess the contribution of dilution by the reagents.

All performance data used (and not used) in calculating the proposed and final treatment standards will be placed in the administrative record for this rule. Relevant design and operating data claimed as Confidential Business Information will be treated as such by the Agency in the administrative record and cannot be disclosed to the public. All data that are not used for final rule development will be documented and justified in the background document and in the administrative record for each specific treatability group.

b. *Treatment Standards Based on Single Facility Data.* The Agency believes that the use of a small number of data sets from a single treatment facility can be representative of the treatment achieved by the particular treatment system. It is impossible for the Agency to sample every facility generating a particular waste or every treatment system treating the waste, thus the Agency established a procedure and methodology for selecting particular facilities and treatment systems that are considered well designed and operated for the determination of BDAT treatment standards (53 FR 31138). The Agency recognizes that there are certain variabilities inherent to every treatment system as well as variability in the wastes. In the calculation of the treatment standards, the Agency accounts for these by multiplying the mean of the treated data by a variability factor. This factor is derived utilizing a quantitative procedure that determines the statistical 99th percentile for the treatment standard. This results in the establishment of a treatment standard that is believed to be achievable 99 percent of the time by a well designed, well operated system.

c. *Demonstrated and Available Technologies.* EPA considers demonstrated technologies to be those that are used to treat the waste or constituent of interest (or those similar to the waste or constituent of interest) with regard to parameters that affect treatment selection. For example, EPA may consider basing a treatment standard on the performance of incineration if incineration is being used to treat that waste or constituent that is similar to it in terms of functional groups, boiling point, heat of combustion, and other physical/chemical characteristics that may affect the treatment performance. EPA also considers those physical technologies that are used to separate or otherwise process chemicals and other materials (i.e., filtration, dewatering, centrifugation, solvent extraction, etc). Some of these technologies clearly are applicable to waste treatment, since the wastes are similar to raw materials processed in industrial applications.

To decide whether demonstrated technologies may be considered "available," the Agency determines whether they (1) Are commercially available and (2) substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste. EPA will only set treatment standards based on a technology that meets the above criteria. The determination of "available" is not dependent on sufficient treatment capacity, that is, determination of BDAT is not limited to only those treatment technologies which have sufficient treatment capacity.

d. *Selection of BDAT Constituents.* The Agency considered all BDAT list constituents present in the waste when establishing treatment standards. The rationale for selection of the regulated constituents can be found in the Background Document for each waste or waste treatability group. The Agency believes that it is not restricted to regulating only those constituents for which a waste is listed. Constituents that are not specifically listed on Appendix VIII can often be used as indicators of either the presence of other Appendix VIII constituents that have no analytical method or can be used as an indication of the effectiveness of a given technology. However, the Agency may choose not to regulate indicator constituents when performance standards can be established for other hazardous or nonhazardous constituents which will ensure that the constituent of concern will be effectively treated.

8. Treatment Investigations for all Second Third Wastes and Presentation of All Proposed Treatment Standards

This section of today's preamble presents a discussion of the status of treatment investigations for all Second Third wastes. Included in this section are all treatment standards that are being proposed in today's rule. This includes many of the Second Third wastes, some of the First Third wastes that are currently regulated under the "soft hammer" provisions, and some Third Third wastes that the Agency has decided to propose ahead of schedule. In this section and in section III.A.9. of today's rule, the listing description for each waste is provided for the convenience of the reader. This description is not intended to be a redefinition of any particular waste code description, nor is the Agency reopening the description for public comment. In a similar manner, the Agency has provided in parenthesis, the appropriate scheduling group (i.e., 1st, 2nd or 3rd Third) with each waste description.

For those Second Third wastes that the Agency is not proposing treatment standards in today's rule, the Agency presents the approach and options that the Agency is considering for establishing BDAT treatment standards. This discussion is intended to give advance notice to the regulated community and to provide an opportunity to comment on these approaches and to submit data that may help in developing such standards.

The Agency is specifically soliciting comments on the proposed treatment standards and the approach to developing treatment standards for each of the individual wastes or treatability groups. Comments and data on specific treatment technologies for specific wastes or subcategories should include a description of the generation process or processes, complete chemical and physical analyses of the wastes and treatment residuals (including all appropriate QA/QC information), as well as technical descriptions of the

treatment technologies including design and operating conditions.

a. *Cyanide Wastes.* Today, the Agency is proposing treatment standards for the majority of wastes containing cyanide. These wastes include several F and K wastes specifically generated by facilities in the metal finishing industry and by facilities engaged in the production of acrylonitrile. The Agency has identified two general treatability groups for the cyanide wastes, metal finishing wastes and wastes generated from the production of acrylonitrile. The treatment standards for cyanides and organic constituents in the wastes are based on testing performed by the Agency and industry submitted data using destruction technologies such as electrolytic oxidation, wet air oxidation, alkaline chlorination, and incineration. The treatment standards for metals are based on technologies such as precipitation, filtration, and stabilization. In addition, the Agency is proposing to transfer these performance data to other U and P waste containing cyanides. Also, the Agency is proposing a methodology to a develop treatment standards for the subcategory of D003 reactive waste identified as the reactive cyanide subcategory.

1. *Wastes from the Metal Finishing Industry.*

F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. (1st)

F007—Spent cyanide plating bath solutions from electroplating operations. (1st)

F008—Plating bath sludges from the bottom of plating baths from the electroplating operations where cyanides are used in the process. (1st)

F009—Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process. (1st)

F010—Quenching bath sludge from oil baths from metal heat treating operations where cyanides are used in the process. (2nd)

F011 Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations. (2nd)

F012—Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process. (2nd)

F019—Wastewater treatment sludges from the chemical conversion coating of aluminum. (1st)

As stated in the introduction, the Agency has defined two general treatability groups within the cyanide waste codes. One of these is comprised of cyanide wastes from the metal finishing industry. The wastes that are generated from the metal finishing industry primarily include wastes from electroplating and heat treating operations. The Agency believes that the wastes generated from these processes are similar—based on the waste characteristics—and therefore comprise one treatability group. Detailed technical description of the specific electroplating and heat treating processes, generation and waste characteristics of these wastes, and discussion of the applicable technologies can be found in the Background Document for Cyanide Wastes.

The Agency has developed three subcategories within the metal finishing treatability group: Metal Finishing Aqueous Liquids, Metal Finishing Organic Liquids, and Metal Finishing Sludges. Wastes in the Metal Finishing Aqueous Liquids Subcategory are typically generated as wastewaters, thereby having a total suspended solids and total organics concentration of less than one percent. The waste codes associated with this subcategory are F007, F008, F009, and F011. Wastes in the Metal Finishing Organic Liquids Subcategory are also generated as liquids, but exceed the 1% total organic content and are therefore considered nonwastewaters. The only waste code associated with this subcategory is F010. Although the listing for F010 describes it as a sludge, it is typically generated as a pumpable sludge that is considered to be a liquid by EPA's "paint filter test". Due to the high organic content in F010, the liquid physical characteristic of F010, and the resultant choices of applicable treatment technologies, EPA has decided to identify these F010 nonwastewaters as Metal Finishing Organic Liquids. Wastes in the Metal Finishing Sludges Subcategory are also generated as nonwastewaters, but have lower organic content. The treatment technologies applicable to these wastes are typically different from those applicable to F010 wastes. The waste codes associated with this subcategory are F006, F012, F019. Treatment residuals and other "derived-from" wastes from managing wastes in any of these three subcategories could be generated as either wastewaters or nonwastewaters, thus EPA is proposing standards for both wastewaters and nonwastewaters in all three subcategories.

i. *Applicable Technologies for Wastes Generated from the Metal Finishing Industry Treatability Group.* Within the metal finishing industry treatability group, the Agency believes that any commercial technology that destroys the organics and cyanide constituents in the waste is an applicable technology. The Agency has identified the following destruction technologies as applicable and demonstrated technologies for the organic and cyanide constituents in the waste generated from the metal finishing industry treatability group: electrolytic oxidation, alkaline chlorination, wet air oxidation, ultraviolet ozonation, oxidation with sulfur dioxide and air or potassium permanganate, high temperature hydrolysis, and incineration. The Agency believes that these technologies destroy the amenable cyanide concentration by converting the amenable cyanide to constituents such as carbon dioxide, nitrogen, and ammonia. The Agency believes that the complex cyanide constituents within the waste are more difficult to treat by these conventional technologies. The Agency believes that ion exchange and ultraviolet ozonation are technologies that may treat the complex cyanides in the waste. The Agency is soliciting comments and data on the use of these technologies or any other commercial technology that treat complex cyanide constituents in the waste. Also, the Agency has identified ion exchange as a potential recycling technology for the cyanide constituent within the wastes. Although the Agency does not believe that this technology has been demonstrated on a commercial basis, the Agency is soliciting comments and data on the use of ion exchange or any other technology for recycling cyanides.

The Agency does not believe that stabilization is an applicable technology for the treatment of amenable or complex cyanide constituent in wastes. The legislative history to section 3004(m) indicates that Congress intended that the "destruction of total cyanides would be required as a precondition to land disposal" (130 Congressional Record S9179, July 25, 1984, statement of Senator Chaffee).

Stabilization processes only reduce the leachability of constituents within a waste but do not destroy the constituent. The Agency believes that

stabilization is geared toward stabilizing cationic species (such as some of the BDAT metals); therefore anionic species (such as cyanides) are not effectively stabilized.

For the metal constituents within the wastes, the Agency has identified as applicable technologies chemical precipitation followed by filtration and stabilization.

The Agency has examined treatment data for the three subcategories of the metal finishing industry. This treatment data was used to develop the BDAT treatment standards for amenable and total cyanide and BDAT metals. The Agency believes that the treatment data used to develop the treatment standards for the three subcategories within the metal finishing industry were obtained from well designed and well operated treatment systems. The Agency believes that any of the other applicable technologies can achieve similar treatment levels as the BDAT technologies as long as the treatment systems are well designed and well operated.

ii. *Regulated Constituents and Treatment Standards for the Wastes Generated from the Metal Finishing Industry Treatability Group.* The proposed regulated constituents and BDAT treatment standards for the wastes generated from the metal finishing industry treatability group are listed at the end of this table. The Agency believes that regulating these constituents will ensure that other BDAT list constituents will be effectively treated by the technologies determined to be BDAT. EPA's rationale for selecting the regulated constituents is presented in the BDAT Background Document for the Cyanide Waste Codes. Facilities must comply with these treatment standards prior to placement of these wastes in land disposal units. Those wastes that are generated naturally meet these standards are not prohibited from disposal in these units. Dilution to achieve these treatment levels is forbidden.

The treatment standard for the cyanide constituent is based on a total waste analysis for amenable and total cyanide concentration for two reasons. First, the Agency believes that by only regulating the amenable cyanide concentration, the complex-metal cyanides that are present in the wastes would not be regulated. Second, based on the review of the available treatment data, the Agency believes that the conventional cyanide treatment technologies do provide substantial treatment of the amenable and total cyanide concentration as measured by the Cyanide Amenable to Chlorination test in Method 9010 (EPA Publication SW-846). However, the Agency believes that these complex-metal cyanides can be treated further by adding another treatment step, (i.e. ozonation and ion exchange) in order to further reduce the concentration of the complex metal cyanides. The Agency is soliciting comments and treatment data for further reduction of the complex-metal cyanides.

As stated before, the Agency is regulating cyanide in the total waste analysis for amenable and total cyanide concentration. The Agency is proposing the total waste analysis for two reasons. One reason, as mentioned before, the Agency does not believe that stabilization is an applicable technology for wastes containing cyanides. The second reason is that the Agency is concerned that by performing the TCLP test under acidic conditions, there is a possibility of losing hydrogen cyanide gas which may produce lowered results. Also, the TCLP test is generally done during acidic conditions with zero headspace and EPA has concerns on the safety of this test as performed in the laboratory. Under acidic conditions, cyanides are converted to hydrogen cyanide, a highly toxic gas. While hydrogen cyanide is highly soluble, there exists a significant possibility of release of this gas during the TCLP extraction process. Uncontrolled releases in the laboratory could pose a health problem for the laboratory personnel. While the Agency believes that these potential releases can be safely accounted for in the laboratory with typical laboratory safety precautions and that the release from a relatively small analytical sample would be minimal, the Agency is concerned that the laboratory personnel may not be aware of the safety precautions that would be required during the extraction procedure. The Agency is soliciting comments from industry on the use of TCLP test for the testing of wastes containing significant levels of total cyanides.

iii. *Identification of BDAT and Regulated Constituents and Treatment Standards for the Metal Finishing Aqueous Liquids Subcategory (F007, F008, F009, and F011).* For the Metal Finishing Aqueous Liquid Subcategory, the Agency tested the technologies of electrolytic oxidation followed by alkaline chlorination and wet air oxidation. Also, the Agency examined data submitted by industry on the treatment of these wastes by alkaline chlorination, high temperature hydrolysis, and oxidation processes with the oxidizing agents such as potassium permanganate or sulfur dioxide and air.

The Agency is proposing BDAT treatment standards for amenable and total cyanide and metal constituents for the wastewater and nonwastewater. The wastewater treatment standard for the amenable and total cyanide constituents within the waste is based on BDAT as wet air oxidation. The wastewater treatment standards for the dissolved metal constituents are based on BDAT as chemical precipitation, filtration and sludge dewatering. For the nonwastewater treatment standards, the total and amenable cyanide and the metals treatment standards are based on a transfer from the performance data for the Metal Finishing Sludges Subcategory. The Agency believes that the nonwastewaters that are generated from treating these wastes have similar characteristics to the Metal Finishing Sludges. Therefore, the nonwastewater cyanide treatment standard is based on BDAT as electrolytic oxidation followed by alkaline chlorination and the treatment standards for the metals are based on chemical precipitation followed by filtration and stabilization. The dissolved metal nonwastewater treatment standards are based on BDAT as stabilization. The Agency must emphasize that the other applicable technologies for treating organics and cyanides can achieve the treatment standards as long as the treatment technologies are well designed and well operated.

iv. *Identification of BDAT and Regulated Constituents and Treatment Standards for the Metal Finishing Organic Liquid Subcategory (F010).* For the Metal Finishing Organic Liquids Subcategory, the only performance data that was available to the Agency is the treatment of this waste by incineration. Due to the high level of organics in these wastes, conventional aqueous cyanide treatment was not performed on these F010 wastes. Concentrations of cyanides were analyzed only in the ash residuals and not in the untreated organic liquid due to analytical difficulties. The Agency has determined that incineration is BDAT for the nonwastewater forms of these Metal Finishing Organic Liquids wastes. The wastewater treatment standards for this subcategory are based on the transfer of the performance of the wet air oxidation treatment system that was the BDAT for cyanide wastes in the Aqueous Metal Finishing Liquids Subcategory.

According to discussions with treaters and generators of F010 wastes, F010 can often exist as a bilayered waste. The treaters often separate an organic layer

from an aqueous layer. This F010 organic layer is what is typically incinerated. According to BDAT definitions, the F010 aqueous layer is considered to be a nonwastewater because the total organic content typically exceeds 1%. Treaters indicate that they can often treat this F010 by conventional cyanide treatment rather than by incineration. At this time, the Agency has not examined the efficiency of this separation process, but has instead proposed standards for all F010 wastes based on the incineration of the organic layer. The Agency believes that although the aqueous layer is typically generated as a nonwastewater, the separation process can be operated at an efficiency such that the aqueous layer can be generated as a wastewater rather than a nonwastewater. Thus, the wastewater treatment standard would apply rather than the nonwastewater standard. The Agency also believes that the generator is not precluded from separating these layers into the two different treatability groups.

For the nonwastewater treatment standards for this subcategory, the Agency is only proposing treatment standards for the total cyanide concentration within the waste due to the performance of incineration. The Agency believes that incineration can destroy the cyanide concentration to the nondetectable levels.

v. *Identification of BDAT and Regulated Constituents and Treatment Standards for the Metal Finishing Sludge Subcategory (F006, F012, F019).* Metal Finishing Sludges are considered nonwastewaters and are generated from a chemical precipitation treatment, which usually follows a cyanide oxidation treatment. The Agency has tested the treatment train of electrolytic oxidation followed by alkaline chlorination for the cyanide constituent in the waste and has tested the treatment train of chemical precipitation followed by filtration and stabilization for the metals within the solid residues. Based on the analysis of the data, the Agency has determined that BDAT for the pretreatment of cyanides in the Metal Finishing Sludges is electrolytic oxidation followed by alkaline chlorination, precipitation with lime and filtration. The Agency has determined that BDAT for the metals within the treatment sludges is stabilization.

The wastewaters and nonwastewaters treatment standards for the cyanide constituent in the Metal Finishing Sludge Subcategory are based on the performance of the treatment system of electrolytic oxidation followed by alkaline chlorination. The Metal Finishing Sludges nonwastewaters standards for the metal constituents are based on the performance of lime precipitation followed by filtration and stabilization. These standards are transferred from F006 to F012 and F019 nonwastewaters standards. In the Land Disposal Restrictions for the First Third Schedule Wastes Final Rule (53 FR 31138), the Agency reserved the BDAT treatment standards for cyanide in the F006 nonwastewaters. The Agency stated in this rule that the F006 treatment sludges may contain treatable levels of cyanide. As noted above, the Agency does not consider stabilization, which is BDAT for the metals in the F006 nonwastewaters, to be a demonstrated technology for the cyanides. The Agency believes that a pretreatment step, that incorporates a technology that destroys the cyanides, should be done before the stabilization of the metals. Therefore, the Agency is transferring the proposed BDAT treatment standards for cyanides in F006 nonwastewaters from the proposed treatment standards for F012 nonwastewaters. This BDAT cyanide treatment standard is based on total waste analysis for amenable and total cyanide concentrations. The Agency is not revising the metal standards for F006 nonwastewaters and is not reopening for comments the promulgated metals standards for F006 nonwastewaters.

BDAT TREATMENT STANDARDS METAL FINISHING LIQUIDS SUBCATEGORY FOR F007, F008, F009, AND F011

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Cyanides (total)	110	(1)
Cyanides (amenable)	0.064	(1)
Cadmium	(1)	0.066
Chromium	(1)	5.2
Lead	(1)	0.51
Nickel	(1)	0.32
Silver	(1)	0.072

1 Not applicable.

BDAT TREATMENT STANDARDS METAL FINISHING LIQUID SUBCATEGORY FOR F007, F008, F009, AND F011

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Cyanides (total)	12	(1)
Cyanides (amenable)	1.3	(1)
Chromium	0.32	(1)
Lead	0.04	(1)
Nickel	0.44	(1)

1 Not applicable.

BDAT TREATMENT STANDARDS ORGANIC METAL FINISHING LIQUID SUBCATEGORY F010

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Cyanides (total)	1.5	(1)

1 Not applicable.

BDAT TREATMENT STANDARDS ORGANIC METAL FINISHING LIQUIDS SUBCATEGORY F010

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Cyanides (total)	12	(1)
Cyanides (amenable)	1.3	(1)

1 Not applicable.

BDAT TREATMENT STANDARDS METAL FINISHING SLUDGES SUBCATEGORY FOR F006

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Cyanides (total)	110	(1)
Cyanides (amenable)	0.064	(1)

1 Not applicable.

BDAT TREATMENT STANDARDS METAL FINISHING SLUDGES SUBCATEGORY FOR F006

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Cyanides (total)	12	(1)
Cyanides (amenable)	1.3	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS METAL FINISHING SLUDGES SUBCATEGORY FOR F012 AND F019

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Cyanides (total)	110	(1)
Cyanides (amenable)	0.064	(1)
Cadmium	(1)	0.066
Chromium	(1)	5.2
Lead	(1)	0.51
Nickel	(1)	0.32
Silver	(1)	0.072

[1] Not applicable.

BDAT TREATMENT STANDARDS METAL FINISHING SLUDGES SUBCATEGORY FOR F012 AND F019

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Cyanides (total)	12	(1)
Cyanides (amenable)	1.3	(1)
Chromium	0.32	(1)
Lead	0.04	(1)
Nickel	0.44	(1)

[1] Not applicable.

2. *Wastes from Acrylonitrile Production.*

K011—Bottom stream from the wastewater stripper in the production of acrylonitrile. (1st)

K013—Bottom stream from the acetonitrile column in the production of acrylonitrile. (1st)

K014—Bottoms from the acetonitrile purification column in the production of acrylonitrile. (1st)

Another treatability group within the cyanide group is the waste generated from acrylonitrile production. The listed waste K011, K013, and K014 are within this treatability group. These wastes are considered to be organic nitrile wastes and are hazardous not only for the organic constituents but also for cyanide. The Agency believes that these wastes are classified in one treatability group because they are generated from the same industrial process and are not typically segregated when managed as hazardous waste.

The Agency estimates that there are 6 facilities that may generate these wastes. Detailed technical description of the acrylonitrile process and waste characterization of these wastes can be found in the BDAT Background Document for these wastes.

Acrylonitrile is produced by the Standard Oil ammoxidation process through the exothermic reaction of propylene, ammonia, and air in a fluidized-bed catalytic reactor at approximately 750–950 °F and 5 to 30 psig. The reaction product is quenched with water generating an absorber wastewater effluent and an acrylonitrile and acetonitrile product stream. These streams are separated and purified, generating product streams, heavy ends (K013, K014) and crude hydrogen cyanide. The acrylonitrile bottoms are usually combined with the aqueous effluent from the quench/absorption section and then steam stripped. The resulting aqueous effluent (K011) is combined with the acetonitrile purification bottoms and typically disposed via underground by injection.

Each of the acrylonitrile wastes contain organics such as acetonitrile, acrylonitrile, acrylamide, benzene, ethyl cyanide and pyridine. These wastes contain about 5000 ppm of cyanide and nickel.

The Agency recognizes any technology that destroys the organics and cyanide constituents in the waste is an applicable technology for this treatability group. The Agency has identified the following technologies as applicable technologies for this treatability group: incineration, critical fluids, wet air oxidation, and wet air oxidation followed by biological treatment. The Agency has also identified precipitation, filtration, and stabilization as applicable technologies for the metal constituents in the waste residues.

i. *Determination of BDAT for the nonwastewaters.* The Agency believes that each of the applicable technologies generate a nonwastewater residue. Incinerators generate an ash residue that, for the purpose of BDAT, are classified as nonwastewaters. The critical fluids technology generates a wastewater phase that may need further treatment which may generate a solid residue. Both wet air oxidation and wet air oxidation followed by biological treatment generate a solid residue.

The Agency has tested rotary kiln incineration and has examined industry submitted data using the treatment system of wet air oxidation and critical fluids for this treatability group. The Agency believes that both incineration and wet air oxidation are demonstrated technologies for the K011, K013, and K014 nonwastewaters treatability group. The Agency believes that the data submitted on the critical fluids treatment system is not a demonstrated process for this treatability group because the treatment data was for a bench scale operation. Therefore, the Agency believes that the demonstrated and available technologies for treating these wastes are incineration and wet air oxidation.

The Agency tested rotary kiln incineration at one facility that was generating in combination K011, K013, and K014 wastes. This waste was collected from the bottom of a surface impoundment. The Agency has also determined that the treatment train of rotary kiln incineration followed by stabilization as BDAT for the nonwastewaters residuals achieves a level of performance that represents treatment by BDAT.

ii. *Determination of BDAT for the wastewaters.* As stated before, each of the applicable technologies also generate a wastewater residue. The untreated waste that was tested by the Agency contained low level of organics and therefore the hazardous constituents were not detected in the scrubber waters. The Agency did not believe that a technical transfer of the scrubber water data generated from this test would be an appropriate transfer. The Agency performed pilot scale tests for the treatment of the K011, K013, K014 wastewaters. The performance of the wet air oxidation system The Agency determined that the wastewaters standards for this treatability group could be transferred from the performance of wet air oxidation followed by biological treatment that was developed by the Office of Water in the Effluent Guidelines Development Document for Effluent Limitations and Standards for the Organic Chemicals Plastics and Synthetic Fibers Point Source Category (40 CFR Part 414).

The Agency has developed treatment standards for the wastewaters based on the performance of the treatment train of wet air oxidation followed by biological treatment for the wastewater. EPA has determined that the treatment train consisting of wet air oxidation followed by biological treatment is

BDAT for the wastewaters for K011, K013, K014.

iii. *Regulated Constituents.* The proposed regulated constituents and BDAT treatment standards for the waste identified as K011, K013, K014 are listed in the table at the end of this section. The Agency believes that regulating these constituents will ensure that other BDAT List constituents will be effectively treated by the technologies determined to be BDAT.

Treatment standards for all of the organic constituents and cyanides are based on the analyses of total constituent concentration. Treatment standards for metal constituents are based on the TCLP analyses for all the waste identified as nonwastewaters.

The Agency is proposing a total cyanide treatment standard for the nonwastewaters. The Agency believes the performance of the treatment system can destroy the cyanide constituent to the nondetectable levels. For the metal constituents present in the ash, the Agency believes that stabilization is an applicable technology. Recently, the Agency received performance data for the stabilization of the metals within the incinerator ash. The Agency has not had an opportunity to review the data for the purpose of this proposal. Preliminary results indicate that for the three stabilization binders that were tested, the performance data showed that the treatment system was not effective. The Agency believes that stabilization is an applicable technology for the metal within the waste and solicits comments and data from industry on the use of this treatment technology for the metals within the waste.

The Agency is aware that the generators of these waste are disposing of the aqueous waste streams from the production by underground injection units. These aqueous waste stream are considered to be K011, K013, K014 due to the "derived from" rule. Before being disposed in a deep well injection unit, these waste must meet the BDAT treatment standards for the wastewaters or be disposed in a no migration unit.

BDAT TREATMENT STANDARDS FOR K011, K013, AND K014

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP(mg/l)
Acetonitrile	1.8	(1)
Acrylonitrile	1.4	(1)

BDAT TREATMENT STANDARDS FOR K011, K013, AND K014—Continued

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP(mg/l)
Acrylamidee	23	(1)
Benzene	0.03	(1)
Cyanides (total)	57	(1)
Nickel	(1)	0.32

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K011, K013, AND K014

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Acetonitrile	0.14	(1)
Acrylonitrile	0.14	(1)
Acrylamide	0.14	(1)
Benzene	0.14	(1)
Cyanides (total)	12	(1)
Cyanides (amenable)	1.3	(1)
Nickel	0.44	(1)

[1] Not applicable.

3. *Cyanide Wastes Designated as Either U or P Wastes.*

P013—Barium cyanide (3rd)
P021—Calcium cyanide (3rd)
P029—Copper cyanide (2nd)
P030—Soluble cyanides salts (NOS) (1st)
P063—Hydrogen cyanide (1st)
P074—Nickel cyanide (2nd)
P098—Potassium cyanide (2nd)
P099—Potassium silver cyanide (3rd)
P104—Silver cyanide (2nd)
P106—Sodium cyanide (2nd)
P121—Zinc cyanide (3rd)

Today, the Agency is proposing numerical treatment standards for the U and P waste codes listed above. These waste codes are typically generated from the metal finishing subcategory. These numerical standards are directly transferred from the proposed BDAT treatment standards for the cyanide F waste codes generated from the electroplating and heat treating operations. The Agency is proposing these numerical treatment standards in this section due to the similarity of the U and P waste codes to these cyanide F waste codes.

The Agency has determined that the constituents present in the U and P waste codes can be treated to the same performance levels as observed in the other waste for which EPA has developed treatment standards. EPA believes that transferring treatment performance for use in establishing treatment standards for untested wastes is valid technically in cases where the untested waste are generated from similar industries and similar processes.

These U and P cyanide compounds dissociate in aqueous conditions to form a soluble cyanide (CN^-) species and a soluble metallic (or alkalie earth) species. In particular, wastes identified as P030 are listed as "soluble cyanides salts, not otherwise specified (NOS)". Of all of the U and P cyanide waste codes, P030 is the most frequently used code. The Agency believes that the listing of these chemicals as "soluble" infers that they will dissociate in aqueous conditions to the cyanide ion. All of these U and P chemicals are typically used as components in either electroplating or heat treating baths.

Treatment standards for total cyanides and amenable cyanides are proposed for both nonwastewater and wastewater forms of all cyanide U and P waste codes. All of the proposed cyanide standards are directly transferred from the standards proposed for the Metal Finishing Aqueous Liquids treatability group (previously described in section III. A. 8. a. 1. of today's rule). The proposed treatment standards for the metals constituents within the particular U and P waste are also transferred from this treatability group. The Agency believes that the P wastes listed above have similar waste characteristics as the Metal Finishing Aqueous Liquids subcategory.

Treatment standards have been proposed for copper in wastes identified as P029 and for zinc standards in wastes identified as P121. In the final rule for the First Third wastes, the Agency did not promulgate standards that were proposed for these two constituents in other wastes. This was primarily because other metals were being regulated for those wastes. The Agency believes that by regulating the other metals, copper and zinc would be controlled. However, for P029 and P121, there are no other metals that the Agency has identified as necessarily present in P029 or P121 wastes. Therefore the Agency believes that these metal constituents should be regulated for these waste codes.

BDAT TREATMENT STANDARDS FOR P013, P021, P029, P030, P063, P074, P098, P099, P104, P106, AND P121

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Cyanides (total)	110	(1)
Cyanides (amenable)	0.064	(1)
Copper (P029 only)	(1)	0.71
Nickel (P074 only)	(1)	0.3
Silver (P099 and P104 only)	(1)	0.07
Zinc (P121 only)	(1)	0.086

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR P013, P021, P029, P030, P063, P074, P098, P099, P104, P106, AND P121

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Cyanides (total)	12.	(2)
Cyanides (amenable).	1.3	(2)
Copper (P029 only).	0.42	(2)
Nickel (P074 only)	0.44	(2)
Silver (P099 and P104 only).	(1)	(2)
Zinc (P121 only)	(1)	(2)

[1] Reserved.
[2] Not applicable.

4. *Cyanide Wastes Designated as D003 Reactive.* Today, the Agency is not proposing BDAT treatment standards for the D003 waste code. However, the Agency is proposing a strategy for the development of the BDAT treatment standards for the cyanide waste designated as D003. The Agency is proposing a subcategory for D003 waste code identified as the D003 Reactive Cyanides Subcategory. [See section III.A.10.c.] According to 40 CFR Section 261.23(a)(5), a waste can be identified as a D003 waste when it is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in quantity sufficient to present a danger to human health or the environment.

The Agency is considering the proposal of treatment standards for nonwastewater and wastewater forms of D003 Reactive Cyanides based on the direct transfer of the total cyanides and amenable cyanides treatment standards of F007, F008, F009 and F011. Information available to the Agency indicates that approximately 90% of the D003 wastes are generated from the electroplating and heat treating industries. In addition, commercial hazardous waste treaters have indicated that a high percentage of the cyanide wastes received by their facilities are typically identified as D003. These wastes are commonly treated by the same treatment technologies that are the basis for the proposed treatment standards for the F007, F008, F009 and F011 wastes. This gives further support for the transfer of the treatment standards.

b. *Wastes from Chlorinated Aliphatics Production.*

F024—Wastes including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes from the production of chlorinated aliphatic hydrocarbons, having carbon content from one to five, utilizing free radical catalyzed processes. [This listing does not include light ends, spent filters and filter aids, spent dessicants, wastewater, wastewater treatment sludges, spent catalysts, and wastes listed in 261.32]. (2nd)

1. *Introduction.* F024 is a listed waste that is generated primarily by facilities in the organic chemicals manufacturing industry. Detailed technical descriptions of the specific production processes generating F024 can be found in the background document for the listing of this waste. The Agency estimates that there are approximately thirty facilities that manufacture chlorinated aliphatic hydrocarbons, having carbon content from one to five, that could potentially generate F024. These facilities are located in the South Central portion of the United States. A brief description of the processes which may generate the listed waste is given below.

The production of chlorinated aliphatic hydrocarbons, utilizing free radical catalyzed processes, typically involves three continuous steps; chlorination of hydrocarbon feedstocks followed by separation and purification of product streams, and separation and purification of the different compounds in the organic product stream.

Chlorocarbon or hydrocarbon feedstocks and a chlorine source (i.e., molecular chlorine) are fed into a series of chlorination reactors. In these reactors, the free radical conversions are normally catalyzed by either heat, a combination of heat and ultraviolet (UV) radiation, or chemicals, such as peroxides and $FeCl_3$. The reactions may be conducted in either the gaseous or liquid phase. The wastes associated with the reaction processes, i.e., reactor residues, tars, or periodic clean-out wastes are the listed waste F024. After the chlorination step, the effluent from the reactor is sent to a filtration unit where spent catalyst is removed. Spent catalysts are not F024 by virtue of the listing definition. Following filtration, the reactor effluent undergoes a product separation step where it is quenched or cooled and/or distilled to separate crude product from the unreacted feedstock as well as to prevent decomposition of the product. Unreacted feedstock is recycled to the reactors. Hydrochloric acid is normally a major by-product from the chlorination reactions and is subject to recovery either from vent gases generated from the reactor or from the cooling/quenching step. After the product separation step, the two-phase crude product stream may be sent to a series of washing, neutralization, and drying units for separation of the product (organic phase) from the acidic aqueous phase. Purification and separation of the different compounds in the organic product stream is further achieved by distillation. The distillation residues or heavy ends from these distillation columns are also the listed waste F024.

F024 wastes generally contain 5 percent water, 5 percent chlorinated organic constituents and 90 percent other nonchlorinated organic constituents. These wastes usually contain high levels of filterable solids. The technologies that the Agency has identified for treatment of these wastes are (1) incineration technologies, including rotary kiln and fluidized bed incineration, and (2) solvent extraction. Fluidized bed incineration or rotary kiln incineration is a destruction technology applicable to organic bearing wastes with solids concentrations that prevent use of liquid injection incineration. Solvent extraction removes organic constituents from a waste by exploiting the relatively high solubilities of these constituents in a particular solvent.

2. *Development of Standards.* For F024, the Agency has data characterizing hazardous constituents from twenty-six sampling and analysis activities at sixteen facilities conducted by EPA's hazardous waste listing program and EPA's land disposal restrictions program. EPA performed BDAT testing using rotary kiln incineration for four F024 wastes representing a broad range of wastes which meet the definition of F024. Six sample sets of analytical data are available for untreated wastes as well as treated wastewaters and nonwastewaters from the rotary kiln incineration testing. Operating data collected during this testing show that

the technology was properly operated; accordingly, all of the above described data were used in the development of BDAT treatment standards for organic constituents.

EPA does not have data that specifically reflect metals treatment in either F024 nonwastewaters or wastewaters. However, the Agency does have performance data on wastes that it believes are sufficiently similar to F024 such that the level of performance can be transferred. For nonwastewaters, these data consist of 3 treated data points for chromium and nickel representing the amount of these metals found in the TCLP leachate following stabilization treatment of K048/K051 incinerator ash residues at one facility. Operating data collected during this testing show that the technology was properly operated; accordingly, all of the data were used in the development and transfer of treatment standards. For wastewaters, the Agency has 3 untreated and treated analyses for chromium and nickel. The data were collected by EPA from one facility using lime and sulfide precipitation followed by vacuum filtration. Operational data collected during this treatment testing indicate that the technology was properly operated; accordingly, all of the data were used in the development and transfer of treatment standards. See Section III.A.5. of this proposed rule for a more detailed discussion related to the transfer of treatment standards and the background document for this waste code for a discussion of the justification of this transfer.

Characterization data for F024 indicate levels of lead in nonwastewaters at treatable quantities. The Agency is currently performing BDAT testing using stabilization of F024 incinerator ash residues. Depending on the results of this testing and the level of performance achieved, the Agency may establish a treatment standard for lead in F024 nonwastewaters and may adjust the nonwastewater standards for chromium and nickel.

EPA has determined that for BDAT List organics in F024 wastes, rotary kiln incineration achieves a level of performance that represents BDAT based on treatment performance data. The Agency believes, however, that a well designed and operated fluidized bed incinerator is an equivalent technology that will be capable of achieving the BDAT standards. Accordingly, EPA will use fluidized bed incineration in its estimates of available treatment capacity. For BDAT List metals in the incinerator ash, EPA has determined that stabilization achieves a level of performance that represents BDAT. For BDAT List metals in the wastewater, EPA has identified chemical precipitation followed by vacuum filtration as BDAT.

The Agency is aware of four facilities that use rotary kiln incineration to treat F024 wastes. Therefore, the Agency believes incineration is demonstrated to treat F024. Incineration followed by metals stabilization for the nonwastewater F024 and chemical precipitation followed by vacuum filtration for the wastewater F024 are judged to be available to treat F024 because (1) these technologies are commercially available or can be purchased from a proprietor, and (2) these technologies provide substantial reduction of both organic and metal hazardous constituents. For a detailed description of the reductions exhibited by treatment of these wastes, refer to the BDAT background document for this waste.

The proposed regulated constituents for F024 and the proposed treatment standards for wastewaters and nonwastewaters are presented in the table at the end of this section. For organic constituents, the standards are expressed as total constituent concentration, and for the metals, the standards reflect concentrations in the leachate developed by using the TCLP.

The Agency solicits data and information on the generation, waste characterization, and treatment of leachate and wastewater treatment residuals as well as stabilization treatment of metals in nonwastewater residuals that are specifically listed as F024.

BDAT TREATMENT STANDARD FOR F024

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/1)
2-Chloro-1,3-butadiene	0.014	(1)
3-Chloropropene	0.014	(1)
1,1-Dichloroethane	0.014	(1)
1,2-Dichloroethane	0.014	(1)
1,2-Dichloropropane	0.014	(1)
cis-1,3-Dichloropropene	0.014	(1)
trans-1,3-Dichloropropene	0.014	(1)
Bis(2-ethylhexyl)phthalate	1.8	(1)
Di-n-octyl phthalate	1.8	(1)
Hexachloroethane	1.8	(1)
Hexachlorodibenzo-furans	0.001	(1)
Hexachlorodibenzo-p-dioxins	0.001	(1)
Pentachlorodibenzo-furans	0.001	(1)

BDAT TREATMENT STANDARD FOR F024—Continued

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/1)
Pentachlorodibenzo-p-dioxins	0.001	(1)
Tetrachlorodibenzo-furans	0.001	(1)
Chromium (Total)	(1)	1.7
Nickel (Total)	(1)	0.048

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR F024

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
2 Chloro-1,3-butadiene	0.28	(1)
3-Chloropropene	0.28	(1)
1,1-Dichloroethane	0.014	(1)
1,2-Dichloroethane	0.014	(1)
1,2-Dichloropropane	0.014	(1)
cis-1,3-Dichloropropene	0.014	(1)
trans-1,3-Dichloropropene	0.014	(1)
Bis(2-ethylhexyl) phthalate	0.036	(1)
Di-n-octyl phthalate	0.036	(1)
Hexachloroethane	0.036	(1)
Hexachlorodibenzo-furans	0.001	(1)
Hexachlorodibenzo-p-dioxins	0.001	(1)
Pentachlorodibenzo-furans	0.001	(1)
Pentachlorodibenzo-p-dioxins	0.001	(1)
Tetrachlorodibenzo-furans	0.001	(1)
Chromium (Total)	0.35	(1)
Nickel (Total)	0.47	(1)

[1] Not applicable.

c. *Wastes from Pigment Production.*

K002—Wastewater treatment sludge from the production of chrome yellow and orange pigments. (3rd)

K003—Wastewater treatment sludge from the production of molybdate orange pigments. (3rd)

K004—Wastewater treatment sludge from the production of zinc yellow pigments. (1st)

K005—Wastewater treatment sludge from the production of chrome green pigments. (3rd)

K006—Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated). (3rd)

K007—Wastewater treatment sludge from the production of iron blue pigments. (3rd)

K008—Oven residues from the production of chrome oxide green pigments. (1st)

K002, K003, K005, K006 and K007 are all Third Third Wastes that are

generated from the production of pigments. These wastes were not originally scheduled to be promulgated until May 8, 1990. However, the statute (§ 3004(g)) does not preclude EPA from prohibiting the land disposal of a given waste ahead of schedule (and the schedule in §§ 268.10–268.12 itself says that wastes will be evaluated by a given date, indicating that the specified date is the latest time by which EPA must act), and in fact compels the Agency to prohibit the land disposal of hazardous wastes as soon as possible.

In today's rule, the Agency is proposing to revise the "No Land Disposal Based on No Generation" treatment standard (previously promulgated for K004 and K008 nonwastewaters) based on recent information on generation and recycling of these wastes. The Agency is also proposing treatment standards for K002, K003 and K006 nonwastewaters based on total recycling and treatment standards for K005 and K007 nonwastewaters based on information indicating cessation of generation.

The Agency is proposing that these "No Land Disposal" treatment standards, whether based on recycling or no generation, only apply to K002, K003, K004, K005, K006, K007 and K008 nonwastewaters as generated (i.e., those wastes as defined in the original listing), and not to nonwastewater residues that may be potentially generated from management of wastes (i.e., "derived-from" nonwastewaters) generated prior to promulgation of the "No Land Disposal" standards.

A specific illustration of this applicability can be found in K008 for which recycling has been identified as BDAT. Leachate from land disposal units containing K008 previously generated also carries the label of K008 under the "derived-from" rule. These leachates could be treated for metals removal by precipitation and filtration prior to discharge. The filtered nonwastewater residuals would therefore also carry the code of K008 according to "derived-from" rule. In this case, EPA is proposing that the treatment standard of "No Land Disposal based on Recycling" would not be applicable to these nonwastewater forms of K008.

The Agency's primary rationale for not applying the "No Land Disposal" treatment standards to these residues (as well as other nonwastewaters that may be potentially generated from future remedial actions) is the concern over the differences in waste characteristics of these residues to the nonwastewaters as originally generated. The basis of the "No Land Disposal Based on Recycling" for K008 was based on the characteristics of the waste as generated. The Agency believes that it is highly likely that at least some portion of these "derived-from" K008 nonwastewaters may contain a sufficient quantity of impurities that would render it unsuitable for recycling.

Further, where the standard is "No Land Disposal Based on No Generation" for these wastes, it is obvious that if a "derived-from" nonwastewater is indeed generated, the basis for the applicability of the standard to that particular waste is no longer substantiated. Since the Agency anticipates that either of these scenarios have a reasonable potential for occurring for K002, K003, K004, K005, K006, K007, and K008 nonwastewaters, the Agency is proposing that the "No Land Disposal" standards do not apply to "derived-from" nonwastewaters. However, the Agency is specifically soliciting comment on the need for the development of treatment standards for K002, K003, K004, K005, K006, K007, and K008 "derived-from" nonwastewaters. The Agency must promulgate treatment standards for all remaining wastes by May 8, 1990, including these nonwastewater residues generated from the previous management of listed wastes.

The Agency has identified some facilities that are manufacturing the pigments associated with these listings but are not generating the listed wastes per se (most of the wastes are wastewater treatment residuals). EPA believes that this may be a result of source reduction techniques that result in compliance with the Clean Water Act without reliance on wastewater treatment that would generate the listed wastes. These wastewaters, while not the listed wastes, may be regulated as hazardous provided they exceed the EP Toxic metal limits or otherwise exhibit a characteristic of a hazardous waste and are managed outside exempt wastewater treatment tanks. EPA must establish treatment standards for all characteristic wastes by May 8, 1990. A discussion of EPA's strategy for establishing treatment standards for characteristic wastes can be found in later sections of this preamble.

1. *Nonwastewaters.* A treatment standard of "No Land Disposal Based on No Generation" for K004 nonwastewaters and K008 nonwastewaters was promulgated with the First Third wastes on August 8, 1988. During the current investigation of the other wastes from pigment production, the Agency has obtained information indicating that there are facilities that are manufacturing both zinc yellow and chrome green oxide pigments. Further, this information indicates that the oven residues (K008) generated in the production of chrome oxide green pigments are being generated but are being totally recycled. Similarly, the facilities which reported producing zinc yellow at the beginning of 1988 are not land disposing of any K004 wastes. One facility does not treat its process wastewaters and does not generate K004. Another facility is totally recycling all of its wastewater treatment residuals, including K004. To date, EPA has received no written comments on the treatment standard of "No Land Disposal Based on No Generation" for either K008 or K004. Presumably, this is because generators were not concerned over the need to land dispose this material. EPA's databases confirm this, in that no K004 or K008 wastes were reported land disposed in 1986. However, since the information obtained by the Agency refutes the basis for the standard, and for the sake of clarification, EPA is today proposing to revise the treatment standard of "No Land Disposal Based on No Generation" for K004 and K008 nonwastewaters to "No Land Disposal Based on Total Recycling".

The information obtained by the Agency indicates that chrome yellow and orange, molybdate orange, and chrome oxide green pigments are manufactured by a varying number of facilities. Wastewater treatment residuals from these facilities, if generated, would correspond to K002, K003, and K006, respectively. Of the facilities known to generate these wastes, one facility currently generates a wastewater treatment sludge that is a mixture of these wastes. The facility sometimes sells this mixture as is, mixes it with other pigments and then sells it, or recycles it back to the production process. The other facility currently treats its process wastewaters using lead compounds as precipitating agents, and ships the generated sludges to a secondary lead smelting facility for metals recovery. The Agency finds no reason that these types of recycling and/or recovery techniques cannot be used on all K002, K003, and K006 nonwastewaters. Therefore, the Agency is proposing a treatment standard of "No Land Disposal Based on Total Recycling".

Based on conversations with representatives of manufacturers of inorganic pigments and responses to EPA's § 3007 questionnaires, the Agency believes that the last company producing chrome green and iron blue pigments (corresponding to K005 and

K007 wastes), shut down production in 1987. Based on this information, the Agency is today proposing a treatment standard of "No Land Disposal Based on No Generation" for K005 and K007 nonwastewaters.

2. *Wastewaters.* The Agency is not proposing treatment standards for the wastewater forms of K004 or K008. Since these wastewaters were First Third wastes, their land disposal is restricted by the "soft hammer" provisions. At this time, the Agency is not proposing treatment standards for the wastewater forms of K002, K003, K005, K006 or K007 wastes. The Agency may develop such treatment standards prior to May 8, 1990, if there is an identified need for such standards (i.e. if wastewater forms of the listed waste are proven to be generated). Wastewater forms of these wastes are expected to be generated from only a few sources. Leachate collected from landfills and other land disposal units that contain previously disposed K002, K003, K005, K006 or K007 nonwastewaters carries the listing of that particular hazardous waste. The Agency is currently evaluating the possibility of transferring treatment performance data from wastes having similar physical and chemical characteristics that are believed to affect treatment performance. The Agency has identified several sources of chromium reduction, cyanide destruction, and metals precipitation/stabilization performance data which may be applicable.

If nonwastewater residuals are generated from treatment of these wastewaters, the residuals would also be considered to be the listed wastes, based on the derived-from rule, and would be required to meet the treatment standards for nonwastewaters. Currently, EPA is proceeding with proposing to establish treatment standards of "No Land Disposal" for K002, K003, K005, K006 or K007 nonwastewaters. However, as an option, it may decide to promulgate numerical standards based on a transfer of the nonwastewater standards from wastes with similar chemical and physical characteristics. This decision will be based on the perceived need for establishing numerical treatment standards for residuals from the treatment of leachate.

The Agency solicits data and information on the generation, waste characterization, and treatment of leachate and wastewater treatment residuals that are specifically listed as K002, K003, K005, K006 or K007 wastes.

BDAT Treatment Standard for K004 and K008 (Nonwastewaters)
NO LAND DISPOSAL BASED ON RECYCLING
BDAT Treatment Standard for K002, K003 and K006 (Nonwastewaters)
NO LAND DISPOSAL BASED ON RECYCLING
BDAT Treatment Standard for K005 and K007 (Nonwastewaters)
NO LAND DISPOSAL BASED ON NO GENERATION

d. *Wastes from Acetaldehyde Production.*

K009—Distillation bottoms from the production of acetaldehyde from ethylene. (2nd)

K010—Distillation side cuts from the production of acetaldehyde from ethylene. (2nd)

1. *Introduction.* K009 and K010 are listed wastes that are generated primarily by facilities in the organic chemicals manufacturing industry. Detailed technical descriptions of the specific production processes generating these wastes can be found in the background document for the listing of these wastes. The Agency estimates that there are two domestic facilities that produce acetaldehyde from ethylene and could potentially generate the K009 and K010 wastes. These facilities are located in the Southern part of the United States.

The manufacturing process of acetaldehyde, as practiced in the United States, is the liquid phase oxidation of ethylene developed by Wacker-Chemie and Hoechst. One facility reports using 100% pure ethylene and the other a mixture of 90% ethylene and 10% ethanol. Ethylene is catalytically oxidized with air in dilute hydrochloric acid solution containing the chlorides of palladium (Pd) and copper (Cu) in a tubular reactor. The reaction products are flash evaporated and the product acetaldehyde passes overhead to the crude distillation column. The aqueous bottoms go to a reactor where the Pd catalyst is regenerated and recycled to the acetaldehyde reactor. The overhead from the crude distillation column is condensed; unreacted ethylene and light hydrocarbons (including a small amount of acetaldehyde) are vented. The crude acetaldehyde from the bottom of this column then goes to final distillation. This crude distillation column yields two wastes: the bottoms and the side cuts. The distillation bottoms (discharge wastewaters) containing high-boiling organic impurities leaves the still bottom which form the listed waste K009. The side cut stream consist of higher boiling organic and chlorinated organics is removed as a side stream higher up the column which form the listed waste K010.

2. *Development of Treatment Standards.* For waste codes K009 and K010, a careful review of waste generation, waste management practices, and waste characterization data was conducted to determine whether these waste codes could be combined into one or more waste treatability groups. Based on this review, K009 and K010 were established as two separate waste treatability groups.

Although these wastes are generated by similar processes the EPA has data showing that K009 wastes are typically less than one percent total organic carbon (TOC) and less than one percent total suspended solids (TSS) and therefore, as originally generated, are classified as wastewaters for the purpose of establishing BDAT. In contrast, EPA has received data showing that K010 wastes are typically over one percent TOC and therefore, as originally generated, are classified as nonwastewaters. Residuals generated from the treatment of either K009 or K010 would then be classified as wastewaters or nonwastewaters, depending on their appropriate characteristics of TOC and TSS. Although these wastes represent two different treatability groups, they are presented in this section because they are generated by the same industry. In addition, these wastes contain similar constituents and in relatively similar concentrations, the standards that EPA is proposing for K009 wastewaters are identical to those proposed for wastewaters derived from the treatment of K010 nonwastewaters (and vice versa).

i. *Wastewaters.* K009 contains treatable concentrations of BDAT list organics, such as, acrolein, acrylonitrile, benzene, chloroform, 1,1-dichloroethane, 2,4-dinitrophenol, ethyl acetate, ethyl methacrylate, methylene chloride, methyl chloride, and toluene. Non-BDAT organic constituents present at treatable concentrations include formaldehyde, acetyl chloride, chloral, paraldehyde, chloroacetaldehyde, and acetic acid. BDAT metals present in the waste at low concentration include chromium (total), mercury, and lead.

EPA has identified the following technologies as potentially applicable

for treatment of the K009 treatability group: (1) hydrolysis followed by biological treatment, followed by incineration of biomass; (2) hydrolysis followed by either carbon adsorption or steam stripping, followed by incineration; (3) biological treatment in combination with either steam stripping or activated carbon; (4) steam stripping followed by carbon adsorption; and (5) wet air oxidation followed by biological treatment. Also, EPA has identified the following technologies as potentially applicable for treatment of the K010 treatability group: (1) incineration, (2) fuel substitution, (3) solvent extraction followed by recovery or incineration of the contaminated solvent, and (4) recycle or reuse.

The technologies EPA has identified as an applicable treatment for the treatability group of K009 are believed to be capable of removing, concentrating, and/or destroying the organic hazardous constituents present in these wastes. For example, biological treatment, hydrolysis, and wet air oxidation are technologies known to treat wastewaters having relatively low concentrations of hazardous organic constituents. But these technologies, alone, are not candidates for BDAT because the treated residuals typically need to undergo further treatment such as incineration prior to disposal. For instance, a carbon adsorption column or a steam stripping may be used to remove hazardous organic constituents present in the treated wastewater effluents from these technologies. Typically, the presence of hazardous organic constituents in these technologies' treated effluents are a direct result of untreated constituents or undesirable reaction products. Detailed information regarding these technologies' applicability to treatment of hazardous organic wastewaters can be found in the *Guidance Document of Applicable Technologies for Listed Hazardous Wastes.*

The Agency has determined that out of two facilities generating the K009 wastes there is one facility currently treating these wastes via a proprietary hydrolysis process followed by biological treatment followed by rotary kiln incineration of biomass. The Agency has determined that out of two facilities generating the K010 wastes there is one facility currently treating these wastes via recycling. The facility recycling K010 wastes manages residues from recycling K010 as described above for K009. The Agency has determined that the other facility disposes of K009 and K010 wastes via underground injection wells.

A facility treating K009 wastewaters via a proprietary hydrolysis process submitted data on the treatment of K009 wastewaters. The Agency believes that hydrolysis alone is not a candidate for BDAT because the technology leaves behind significant amounts of hazardous organic constituents that require further treatment prior to disposal. This facility has informed the Agency that it intends to re-submit data pertinent to its hydrolysis process and other treatment trains applicable to K009 and K010 wastes. These data are expected to be available during the comment period of this rule.

EPA's Office of Water (OW) performance data supporting the development of rules for the Organic Chemicals, Plastic and Synthetic Fibers (OCPSF) industries was reviewed for possible application to K009 and K010. EPA determined that K009 and K010 wastewaters are already regulated, in part, under OCPSF final rules applicable to the Commodity Organic Chemicals (COC) industry subcategory (see 40 CFR Part 414, Subpart F, §§ 414.60–414.66). Additional relevant BAT limitations can be found in 40 CFR Part 414, Subparts I and J. BAT limitations were based on the treatment of wastewaters similar to K009 and K010 wastewaters. Further, each of the technologies or combination of technologies used in the BAT limitations are considered BDAT for K009 and K010 wastewaters because these technologies were demonstrated for wastewaters similar to K009 and K010 wastewaters. Therefore, EPA is numerical treatment standards for the organic constituents in K009 and K010 based on a transfer of a portion of the treatment performance data contained in the Office of Water OCPSF database.

The BAT effluent limitations are based on priority pollutant data and data from other industry plants with well-designed and well-operated BAT models. The concentration-based BAT effluent limitations hinge on the performance of the end-of-pipe treatment component (biological treatment for the end-of-pipe biological treatment subcategory and physical/chemical treatment for the non-end-of-pipe treatment subcategory) plus in-plant pretreatment technologies that remove pollutants prior to discharge to the end-of-pipe treatment system. The pretreatment technologies include steam stripping, activated carbon, hydroxide precipitation for metals, alkaline chlorination for cyanide, and in-plant biological treatment. The Agency believes these technologies represent BDAT candidates for treatment of the BDAT list hazardous organic constituents present in the K009 and K010 wastewaters because these technologies were determined to be well-designed and well-operated, substantially reduce the amount of organics, and these technologies are commercially available. In addition, EPA does not believe that the requirement that BAT be economically achievable would result in a different technology selection, in this case, under the criteria established for BDAT under HSWA.

OW determined that these BAT limitations are applicable to K009 and K010 wastewaters, one of the industrial process wastewaters that was sampled as part of OW efforts to characterize and to subcategorize OCPSF industries. Therefore, EPA is proposing to transfer some of these BAT effluent limitations as BDAT standards for K009 and K010 wastewaters.

The Agency is currently evaluating the validity and reliability of available analytical methods being employed to characterize some of the non-BDAT List organic constituents present in K009 and K010 wastes. The Agency is also evaluating the possibility of establishing a method, parameter, or constituent that could be used as either a surrogate or indicator of treatment of these non-BDAT List organics. Potential parameters under consideration are BOD, COD, TOC, total volatile content, total semivolatile content, and total chlorine content. The Agency does not expect these non-BDAT constituents to interfere or behave differently from the BDAT list constituents identified as constituents candidate for regulation in K009 wastewaters. However, the Agency solicits information that can substantiate the likelihood of these constituents to behave differently or to interfere with the treatment of other BDAT List organic constituents. If such data become available, the Agency may need either to defer regulation on these non-BDAT List constituents to a later date or to set additional requirements for K009 wastes.

If the reliability and validity of analytical methods cannot be determined prior to promulgation or 1990, the Agency would be unable to develop numerical treatment standards for these non-BDAT List constituents. Similarly, if the Agency fails to identify a surrogate parameter or indicator constituent that would account for either the destruction or removal of these non-BDAT list organic constituents, the Agency would be unable to set a surrogate parameter or indicator constituent that would indicate that treatment of these organic constituents

has been accomplished. As a result, the Agency may consider amending, at a later date, treatment standards established for the K009 to include a method of treatment such as either carbon adsorption or steam stripping of K009 wastewaters prior to land disposal.

In summary, the Agency is proposing treatment standards for K009 and K010 wastewaters based on the performance data that was used to support the OCPSF BAT effluent limitations applicable to COC industry subcategory. EPA has determined that treatment of K009 and K010 wastewaters in well designed and well operated biological treatment units, steam stripping units, and/or steam stripping followed by biological treatment units represents BDAT for wastewaters forms of K009 and K010. The regulated constituents, the treatment standards, and the treatment trains applicable to hazardous constituents in K009 and K010 wastewaters are listed at the end of this section.

ii. *Nonwastewaters.* K010 contains a total concentration of chlorinated organic compounds of approximately 20 ppm. Those chlorinated organics and other organics appear to be identical to those identified in K009. However, K010 has slightly higher concentrations of the chlorinated organic and the other organics. BDAT metals present in the waste above detection levels are chromium (total) and lead. K010 has a heat content of approximately 1,660 BTU/lb. K010 wastes as typically generated are in excess of one percent TOC and are classified as nonwastewaters. Therefore, based on waste generation and waste characteristics, K010 wastes are nonwastewaters and have been placed in a separate waste treatability group from K009 wastes.

One of the facilities submitting data has claimed that its K010 wastes are beneficially reused. Also, the facility reported that the recycling of K010 wastes results in a waste stream that is classified as a wastewater (i.e., containing <1% TSS and <1% TOC). Based on the information submitted by this facility, the Agency believes that this facility recycling of K010 wastes is a legitimate recycling practice that by no means should be interpreted as either evaporation or dilution of the restricted wastes in order to avoid regulation.

The technologies EPA has identified as an applicable treatment for the treatability group of K010 are believed to be capable of removing, concentrating, and/or destroying the organic hazardous constituents present in these wastes. EPA has identified incineration as a potential demonstrated treatment technology for organic hazardous constituents in K010. Fuel substitution involves the use of combustible organic wastes as substitutes for conventional fuels burned in high temperature industrial processes. In order for a waste to be a good candidate for a fuel substitute, the waste must have a reasonable high concentration of organic chemicals with sufficient heat content (BTU per pound). Also, it must have a relatively low concentration of noncombustible materials such as ash, water, metals, and chlorine. The Agency believes that burning of K010 wastes in a well designed and well operated high temperature industrial boiler or kiln attains the performance achievable by other thermal destruction units such as a fluidized bed, rotary kiln, and liquid injection incinerators.

The burning of K010 may result in incineration/fuel substitution scrubber waters. Ashes from the burning of K010 are not generated due to typical low ash contents. However, nonwastewater forms of K010, after incineration, may result from the treatment or filtration of the scrubber waters. Scrubber waters may need additional treatment prior to disposal in order to remove metals. Detailed information regarding these technologies applicability to treatment of hazardous organic nonwastewaters can be found in the *Guidance Document of Applicable Technologies for Listed Hazardous Wastes.*

The Agency has been unable to identify any facility using solvent extraction, prior to disposal or reuse, for treatment of K010 or wastes judged to be similar. However, the Agency believes this technology may be technically capable of recovery of valuable constituents from K010 prior to disposal. At least one facility reported recycling of K010 wastes and residues from these practice are reported to be co-treated with K009 wastes.

The Agency has data from rotary kiln incineration of K019 wastes which the Agency intends to propose to transfer as treatment standards for K009 and K010 nonwastewaters. Characterization data for K019 wastes show that K019 wastes have similar chlorinated organic hazardous constituents to those present in K010 nonwastewaters. The Agency believes that K019 is a waste more difficult to treat than K010 because K019 show higher concentrations of those chlorinated organic hazardous constituents found to be similar or more difficult to treat.

The Agency concluded that rotary kiln incineration of K019 wastes represented BDAT because the technology provided the best available treatment for K019 wastes. The Agency believes that is technically feasible to transfer the numerical treatment standards established for K019 to K009 and K010 nonwastewaters. Therefore, EPA is proposing numerical treatment standards for K010 nonwastewaters based on the performance of rotary kiln incineration for K019 wastes. Because K009 nonwastewaters are expected to contain similar hazardous organic constituents to those shown in K010 nonwastewaters, EPA is proposing that K009 nonwastewaters meet the same numerical treatment standards we are proposing today for K010 nonwastewaters. Detailed information of the Agency's rationale for selecting organics as constituents proposed for regulation is provided in the *Proposed BDAT Background Development Document for K009 and K010 Wastes.*

EPA has determined that incineration in a rotary kiln will achieve a level of performance that represent BDAT for nonwastewater forms of K009 and K010 wastes. The regulated constituents and the treatment standards for nonwastewaters are listed at the end of this section.

BDAT TREATMENT STANDARDS FOR K009 AND K010

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Chloroform	6.0	(1)
1,1-Dichloroethane	6.0	(1)
Methylene chloride	30.0	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K009 AND K010

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Acrolein	0.14	(1)
Chloroform	0.09	(1)
1,1-Dichloroethane	5.3	(1)
Ethyl methacrylate	0.18	(1)
Methylene chloride	0.03	(1)

[1] Not applicable.

TREATMENT TRAINS FOR K009 AND K010 WASTEWATERS

Constituent	Technology basis
Acrolein	Biological.
Chloroform	Biological plus Steam Stripping.
1,1-Dichloroethane	Steam Stripping.
Ethyl methacrylate	Biological.
Methylene chloride	Biological plus Steam Stripping.

[Note: The technologies shown are the basis of the treatment standard. They are not required to be used in meeting the treatment standards.]

e. *Wastes from the Production of Ethylene Dichloride and Nitrobenzene.*

K019—Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production. (2nd)

K025—Wastewaters generated from managing distillation bottoms from the production of nitrobenzene by the nitration of benzene. (2nd)

K019 and K025 wastes were originally scheduled to be examined as part of the Second Third wastes. Numerical treatment standards, based on the performance of incineration in a rotary kiln, for the wastewater and nonwastewater forms of K019 were proposed with the First Third wastes and promulgated on August 8, 1988. In addition, a treatment standard of "No Land Disposal Based on No Generation" for nonwastewater forms of K025 was also proposed and promulgated with the First Third wastes. A treatment standard of "No Land Disposal Based on No Generation" for wastewater forms of K025 was also proposed with the First Third wastes, but was not promulgated because the Agency determined that K025 wastewaters could be generated as leachate from previously land disposed K025 nonwastewaters (i.e., the basis of the standard, "no generation" of wastewaters, was not valid).

While EPA did not promulgate treatment standards for the K025 wastewaters on August 8, 1988, the "soft hammer" provisions did not apply because K025 wastes were originally scheduled with the Second Third wastes. Since the Agency is not proposing treatment standards for these wastewaters in today's rule and will not be able to promulgate any for them by the statutory deadline, land disposal of K025 wastewaters will now be restricted according to the "soft hammer" provisions in § 268.8.

EPA is presenting this information in today's preamble, as a matter of convenience, in order to show all existing and proposed treatment standards for the Second Third wastes. EPA is not reopening the comment period on the promulgated numerical treatment standards for K019 wastes or on the promulgated "No Land Disposal Based on No Generation" for K025 nonwastewater. The Agency has established variance procedures for those facilities that must land dispose these wastes and cannot meet the promulgated treatment standards. These variance procedures are outlined in 40 CFR 268.44.

f. *Wastes from Phthalic Anhydride Production.*

K023—Distillation light ends from the production of phthalic anhydride from naphthalene. (3rd)

K093—Distillation light ends from the production of phthalic anhydride from ortho-xylene. (3rd)

K094—Distillation bottoms from the production of phthalic anhydride from ortho-xylene. (3rd)

K023, K093 and K094 are all Third Third Wastes that are generated from the production of phthalic anhydride. These wastes were not originally scheduled to be promulgated until May 8, 1990. However, the statute does not preclude EPA from prohibiting the land disposal of any given waste ahead of schedule and in fact compels the Agency to prohibit the land disposal of hazardous wastes as soon as possible.

The Agency has data on the incineration of K024 nonwastewaters (distillation bottoms from the production of phthalic anhydride from naphthalene) that also contain phthalic anhydride. Treatment standards for K024 wastewaters and nonwastewaters were promulgated with the First Third wastes on August 8, 1988. These standards were based on the performance of incineration of K024 nonwastewaters in a rotary kiln and the concentrations of hazardous constituents found in the ash and scrubber water residuals. In today's rule, the Agency is proposing to directly transfer these treatment standards to K023, K093 and K094.

The Agency has determined that the treatment standards for K024 may be transferred to these wastes because: (1) All of these wastes are generated from the production of phthalic anhydride; (2) All of these wastes appear to contain similar concentrations of phthalic anhydride, high BTU content, and low concentrations of BDAT metals; (3) Distillation residues generated from production processes using naphthalene (corresponding to K023 and K024 wastes) are expected to contain higher concentrations of less volatile constituents than the distillation residues generated from production processes using ortho-xylene (corresponding to K093 and K094 wastes). Since the constituents in K023 and K024 are less volatile, they are also less easily vaporized in a rotary kiln and subsequently destroyed; and (4) Distillation bottoms (K024) are expected to contain higher concentrations of less volatile constituents than the distillation light ends (K023). Again, since these constituents are less volatile, they are also less easily vaporized in a rotary kiln and subsequently destroyed.

Based on this analysis, the Agency has determined that K024 represents the most difficult to treat of the four wastes generated from the production of phthalic anhydride. Therefore, the Agency is proposing to transfer the performance data from the incinerations of K024 to the less difficult to treat K023, K093, and K094.

While the proposed treatment standards for K023, K093 and K094 are based on the performance of incineration of K024 in a rotary kiln, other treatment technologies such as fluidized bed incineration, fuel substitution units, biodegradation, and solvent extraction, that can achieve these standards are not precluded from use by this rule. The Agency is currently unaware of any alternative treatment or recycling technologies that have been examined specifically for these wastes and solicits data and comments on these.

The Agency has data that indicates that there are relatively few generators of K023, K093 and K094. Information also suggests that many of these wastes, as generated, are not typically land disposed. The Agency considered proposing a treatment standard of "No Land Disposal Based on No Generation" for the nonwastewater forms of K023, K093 and K094. However, the Agency prefers to establish numerical standards whenever a transfer of standards can be reasonably performed.

EPA has determined that incineration in a rotary kiln will achieve a level of performance that represents the best demonstrated available treatment technology (BDAT) for nonwastewater forms of K023, K093 and K094. EPA is proposing to directly transfer the K024 wastewater and nonwastewater treatment standards to K023, K093 and K094 wastewaters and nonwastewaters respectively. While phthalic anhydride is the primary hazardous constituent in K023, K024, K093 and K094, it is readily hydrolyzed by water to phthalic acid. Thus, phthalic anhydride cannot be directly analyzed. However, there is an analytical method for phthalic acid. Thus, the treatment standards for K024 wastewaters and nonwastewaters are based on analyses for phthalic acid. This constituent, although not listed as a

hazardous constituent in Part 261 Appendix VIII, was chosen as a surrogate compound for phthalic anhydride. The proposed treatment standards for K023, K093 and K094 wastes are based on analysis of total constituent concentration for phthalic acid and are listed in the tables at the end of this section.

BDAT TREATMENT STANDARDS FOR K023, K093 AND K094

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total Composition (mg/kg)	TCLP (mg/l)
Phthalic acid	28	Not applicable.

BDAT TREATMENT STANDARDS FOR K023, K093 AND K094

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total Composition (mg/l)	TCLP (mg/l)
Phthalic acid	0.54	Not applicable.

g. *Wastes from the Production of Dinitrotoluene, Toluene Diamine and Toluene Diisocyanate.*

K027—Centrifuge and distillation residues from toluene diisocyanate production. (2nd)

K111—Product washwaters from the production of dinitrotoluene via nitration of toluene.

K112—Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.

K113—Condensed liquid light ends from the purification of toluene diamine in the production of toluenediamine via hydrogenation of dinitroluene.

K114—Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.

K115—Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.

K116—Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine.

U221—Toluenediamine. (lst)

U223—Toluene diisocyanate. (lst)

1. *Introduction.* K027, K111–K116, U221, and U223 are all listed wastes that are generated primarily by facilities in the organic chemicals manufacturing industry. Detailed technical descriptions of the specific production processes generating these wastes can be found in the background document for the listing of these wastes. The Agency estimates that there are approximately eight facilities manufacturing dinitrotoluene (DNT), toluenediamine (TDA), and/or toluene diisocyanate (TDI) that could potentially generate these listed wastes. In addition, there are other facilities that may potentially generate U221 and U223 wastes. The facilities manufacturing DNT, TDA, and TDI are located in the Southern and Eastern parts of the United States.

The manufacturing process of TDI typically involves three continuous chemical processes: (1) Nitration of toluene to form DNT; (2) Hydrogenation of DNT to form TDA; and (3) Phosgenation of TDA to form TDI. Because the facilities generating these products have similar manufacturing processes and the respective wastes appear to contain similar chemical constituents, the Agency decided to investigate the feasibility of creating a minimum number of treatability groups for these wastes. EPA conducted a careful review of waste generation, waste management practices, and waste characterization data for these wastes. Based on this review, EPA believes that these wastes comprise two waste treatability groups: (1) the K027, K113–K116, U221, and U223 treatability group and (2) the K111 and K112 treatability group. The following two sections provide EPA's rationale for establishing these treatability groups and the development of treatment standards for each.

2. *Development of Standards for the K027, K113–K116, U221 and U223 Treatability Group.* K027 and K113–K116, as generated, are usually nonwastewaters containing high concentrations of aromatic organonitrogen compounds. Specifically, the Agency believes that K027 and K113–K115 are expected to contain high concentrations of TDA. Besides the organonitrogen compounds TDA and TDI, K116 is expected to contain high concentrations of chlorinated hydrocarbons such as carbon tetrachloride and phosgene. K027, K123, K114 and K116 are expected to contain, if any, very low concentrations of metals. However, available data show that K115, as originally generated, contains treatable concentrations of nickel (up to approximately 5%). The Agency has information showing that facilities generation K027 and K113–K116 usually either treat or dispose these wastes in the same or similar units.

Although the Agency lacks characterization data for the U221 and U223 wastes, the Agency believes that organic constituents present will consist mostly of TDA in U221 and of TDI in U223 wastes. Since TDI and TDA products are generated from similar manufacturing processes, EPA believes that any impurities in either commercial chemical products or off-specification chemical products meeting the listing criteria for U221 and U223 will consist of constituents similar to those typically shown or expected to be contained in K027, K115 and K116. As a result, the Agency expects U221 and U223 to show treatment characteristics similar to these K wastes. Information collected by the Agency indicates that both of these U wastes are amenable to the same treatment technologies that are applicable to these K wastes. Therefore, EPA placed U221 and U223 wastes into the same treatability group of these K wastes.

For nonwastewater forms of this treatability group, EPA has identified the following technologies as potentially applicable for treatment of the hazardous organic constituents contain in these wastes: (1) solvent extraction followed by recovery or incineration of the contaminated solvent; (2) recycle or reuse; (3) fuel substitution; and (4) incineration. EPA has identified stabilization as potentially applicable treatment of BDAT list metals contained in K115 only.

The Agency has been unable to identify any facility using solvent extraction for treatment of these wastes or any wastes that the Agency believes would be sufficiently similar to these wastes. At least one facility reported previous recycling of K027 wastes, but has since ceased this practice. One facility also reported recycling K113 and U223, but occasionally incinerates K113. EPA has thus determined that solvent extraction is not currently demonstrated for these nonwastewaters.

The Agency has determined that out of eight facilities generating these wastes, three facilities are currently incinerating these wastes. There are at least three facilities handling K027 and/or K113–K116 by fuel substitution in high temperature industrial boilers. Two facilities incinerating K027 reported treating K113–K115 or K116 by fuel substitution and one facility treating K027 by fuel substitution. Therefore, the Agency has determined that both fuel substitution and incineration are demonstrated for organic constituents present in these K wastes.

The burning of these nonwastewaters may result in incineration/fuel

substitution scrubber waters that would be classified as wastewaters with the respective waste codes. The Agency believes that ashes from the burning of these wastes are not typically generated due to typical low ash contents. However, treatment or filtration of the scrubber waters may result in a treatment residual that would be classified as a nonwastewater with the respective waste codes. The majority of the facilities burning these wastes either by fuel substitution or incineration reported the generation of incineration scrubber waters.

For BDAT list metals, available characterization data show treatable concentrations of nickel in untreated K115 (up to approximately 5%). The Agency does not have characterization data for the concentration of nickel in K115 incineration treatment residuals, such as ashes, and sludges. The Agency believes that due to the high level of nickel in the untreated K115, the nonwastewater treatment residues of fuel substitution and incineration would require further treatment. As a result, the Agency is proposing to regulate nickel in K115 nonwastewaters. To do so, EPA examined its performance data for the First Third wastes and is proposing to transfer the nickel standards for F006 nonwastewaters (based on stabilization) to K115 nonwastewaters. This is because the Agency believes that nonwastewater residuals from the incineration and/or fuel substitution of K115 are amenable to stabilization treatment. Also, the Agency believes that none of the constituents present in these treatment residuals, if any, are likely to interfere with the treatment of nickel. EPA's rationale for developing the numerical standard applicable to K115 is provided in the BDAT background document for this treatability group.

At this time, EPA does not have any specific performance treatment data for the organics contained in any of the wastes in this treatability group nor has the Agency pursued any performance testing of any particular treatment process for these wastes. This is because EPA currently lacks analytical methods that can satisfactorily analyze for toluidine, TDI, TDA, and other major organic constituents (i.e., the constituents that would be selected for regulation due to their anticipated high concentrations in the untreated wastes) in complex waste matrices. Nor has the Agency been able to identify any method, parameters, or indicator constituents for the hazardous organic constituents present in these wastes. Therefore, the Agency believes that numerical BDAT treatment standards for the organic constituents present in these wastes cannot be developed at this time.

However, the Agency believes that incineration and fuel substitution are demonstrated and are the best technologies currently available to treat this treatability group. The Agency has data showing that incineration typically provides substantial reduction in concentration of most organic hazardous constituents in wastes. Typically, many can be reduced to nondetectable levels as measured in the residues from incineration (i.e., ash and scrubber water). EPA has data on incineration for a variety of organic compounds from many different regulatory programs.

Based on all of this information, EPA has determined that incineration and fuel substitution represent BDAT for K027, K113–K116, U221, and U223. First, the Agency has found that for all of the First Third wastes that were treated by incineration, the treatment levels achieved by incineration represented BDAT. Also, this determination has been demonstrated for well designed and well operated fuel substitution units from which EPA has developed treatment standards. Therefore, the Agency believes that if incineration and fuel substitution have been demonstrated to represent the best treatment for wastes with similar treatability characteristics or for wastes having organic hazardous constituents that are more difficult to incinerate, then incineration and fuel substitution are also demonstrated for these K wastes. Finally, EPA's records document the common use of incineration and fuel substitution as methods of treatment for these wastes.

As a result, EPA is proposing to specify using either incineration or fuel substitution as a method of treatment for these K wastes rather than a numerical standard. K115 wastes must comply with both: (1) Any of the methods of treatment requirements and (2) the numerical treatment standards proposed for nickel. The Agency believes that by specifying these technologies as methods of treatment the Agency fully complies with the land disposal restrictions mandated by Congress. This is because: (1) EPA has determined that the K wastes discussed in this section are amenable to incineration and (2) EPA has determined that these technologies represent BDAT for these K wastes. Treatment residuals from either incinerators or fuel substitution units burning of these K wastes are not prohibited from land disposal. The Agency believes that these treatment methods will provide a substantial reduction of the amount of hazardous organic constituents present in these wastes.

It is also important to point out that EPA requires that an incinerator burning RCRA hazardous wastes must meet the requirements specified in 40 CFR Part 264 Subpart O or Part 265 Subpart O. Compliance with 40 CFR Part 266 would have to be required for any hazardous waste burned for energy recovery in fuel substitution units. The Agency believes that these technologies are available because: (1) These technologies are commercially available or can be purchased from a proprietor and (2) these technologies achieve substantial reduction of organic hazardous constituents of wastes judged to be more difficult to treat than those organics in these K wastes.

For wastewater forms of wastes in this treatability group, EPA has identified carbon adsorption followed by incineration of the spent carbon as potentially applicable treatment technologies for the hazardous organic constituents contained in these wastewaters. EPA has identified chemical precipitation followed by filtration as a potentially applicable treatment technology for the BDAT list metals contained in K115 only.

Wastes in this treatability group, as originally generated, are typically classified as nonwastewaters. However, the Agency believes that wastewater forms of these wastes can result from either RCRA corrective actions or CERCLA remedial actions (e.g., leachate and contaminated ground water). Therefore, these types of wastewaters are also subject to the land disposal restrictions of HSWA according to 40 CFR 268.

EPA believes that any of the organonitrogen compounds contained in wastewater forms of this treatability group can easily be adsorbed on carbon. Available data suggest that the organonitrogen compounds comprising these wastes, as originally generated, are aromatic in nature and thus, their chemical structures and physical properties (e.g., high molecular weight) make them amenable to carbon adsorption treatment.

Therefore, EPA is proposing to specify carbon adsorption as a method of treatment for the organic constituents in wastewater forms of K027, K113–K116, U221, and U223. In addition, K115 wastewaters must comply with both: (1) The method of treatment requirement and (2) the numerical treatment standard proposed for nickel. The effluent wastewater from carbon

adsorption of these wastewaters is not prohibited from land disposal (provided that the additional standards for nickel is subsequently achieved for those wastewaters identified as K115). However, the spent carbon resulting from this treatment process must comply with the nonwastewater standards applicable to these wastes.

The Agency does not have characterization data for the concentration of nickel in K115 incineration scrubber waters. However, the Agency believes that these wastewaters will contain treatable concentrations of nickel. As a result, the Agency is proposing to regulate nickel in K115 wastewaters. To do so, EPA examined its performance data for the First Third and determined that it is technically feasible to transfer the nickel standards the EPA established for other First Third wastewaters to K115 incineration wastewaters. This is because the Agency believes that the incineration and fuel substitution residuals being classified as K115 wastewaters are amenable to chemical precipitation (lime and sulfide) treatment followed by filtration (vacuum filtration). Also, the Agency believes that none of the hazardous constituents present in the K115 treatment residuals are likely to interfere with the treatability of nickel. EPA's rationale for developing the numerical standard applicable to K115 is provided in the background document for this treatability group.

3. *Deferral of Treatment Standards for the K111 and K112 Treatability Group.* The Agency has determined that K111 and K112 represent a separate waste treatability group. As generated, they are usually wastewaters containing low concentrations of organic compounds (less than 1% by weight) and very low concentrations of metals. In addition, these wastes are often co-disposed or co-treated in wastewater treatment systems.

For hazardous organic constituents in K111 and K112 wastewaters, EPA has identified the following technologies as potentially applicable: (1) biological treatment followed by incineration of the biomass; (2) carbon adsorption followed by incineration of the spent carbon; (3) chemical oxidation; and (4) solvent extraction followed either by incineration or recycling of the extracted organics. All of these treatment processes would generate nonwastewater residuals (e.g., spent biomass, spent carbon, and solvent extract, respectively) that may then be required to be incinerated in a fluidized bed, multiple hearth, or rotary kiln. EPA has been unable to identify a facility currently using solvent extraction for either K111 or K112 wastes.

The Agency has determined that out of eight facilities generating the K111 and K112 wastes, there are three facilities currently treating these wastes in biological treatment units and three facilities using carbon adsorption as either treatment or a polishing step prior to disposal.

Currently, EPA lacks performance treatment data from facilities currently treating these wastes either by biological treatment or carbon adsorption followed by incineration nor has EPA conducted any test to collect such data. This is because EPA has the same analytical problems already discussed for K027, K113–K116, U221, and U223.

At this time, EPA is not proposing any treatment standard for wastes identified as K111 and K112 wastewaters. Since these wastes were listed after the effective dates of the 1984 RCRA amendments, the agency believes that land disposal of these wastes is not subject to the "soft hammer" provisions. The Agency does not believe that incineration is applicable for K111 and K112 wastewaters; however, residues from treatment of K111 and K112 wastewaters that are identified as K111 and K112 nonwastewaters may require incineration prior to disposal.

BDAT Treatment Standard for K027, K113–K116, U221 and U223

(Nonwastewaters)

EITHER INCINERATION OR FUEL SUBSTITUTION—AS A METHOD OF TREATMENT

BDAT Treatment Standard for K027, K113–K116, U221 and U223

(Wastewaters)

CARBON ADSORPTION AS A METHOD OF TREATMENT

BDAT TREATMENT STANDARDS FOR K115

[Nonwastewaters]

Constituent	Maximum for any Single Grab Sample	
	Total composition (mg/kg)	TCLP (mg/l)
Nickel	Not applicable	0.32

BDAT TREATMENT STANDARDS FOR K115

[Wastewaters]

Constituent	Maximum for any Single Grab Sample	
	Total composition (mg/kg)	TCLP (mg/l)
Nickel	0.47	Not Applicable.

h. *Wastes from 1,1,1-Trichloroethane Production.*

K028—Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane. (2nd)

K029—Waste from the product steam stripper in the production of 1,1,1-trichloroethane. (2nd)

K095—Distillation bottoms from the production of 1,1,1-trichloroethane. (2nd)

K096—Heavy ends from the heavy end column from the production of 1,1,1-trichloroethane. (2nd)

1. *Introduction.* K028, K029, K095, and K096 are listed wastes that are generated primarily by facilities in the organic chemicals manufacturing industry. Detailed technical descriptions of the specific production processes generating these wastes can be found in the background document for the listing of these wastes. The Agency estimates that there are approximately three facilities manufacturing 1,1,1-trichloroethane that could potentially generate these listed wastes. These facilities are located in the South Central portion of the United States.

2. *Standards for K028.* 1,1,1-Trichloroethane is produced commercially by the catalytic hydrochlorination of vinyl chloride. Vinyl chloride and hydrogen chloride are reacted in the presence of a ferric chloride catalyst to produce 1,1-dichloroethane as an intermediate chemical. The spent catalyst is separated from the product stream via filtration or distillation. This spent catalyst stream is the listed waste K028. The 1,1-dichloroethane intermediate is then reacted with chlorine gas to produce 1,1,1-trichloroethane.

K028 wastes generally contain greater than 50 percent chlorinated organics, with the balance of the waste comprised of heavy tars and spent ferric chloride catalyst. The waste generally contains high levels of filterable solids and has a moderate heating value. Consistent quantitative analysis of untreated K028 proved to be very difficult. Some of the problems were due to the volatility of the 1,1-dichloroethane, the reactivity of the residual ferric chloride catalyst, and the presence of tarry materials in the waste. It was particularly difficult to perform analyses for metals and solids content.

The Agency has identified incineration as an applicable technology for treatment of K028. While the Agency has been unable to obtain performance data based on incineration for K028, the Agency is aware of two facilities that are currently using rotary kiln incineration to treat K028 waste. Therefore, the Agency believes that incineration is demonstrated for K028. In addition, the Agency does have performance data on the incineration of K019 and F024. Characterization data from four sampling activities at three facilities show that K028 wastes have chemical and physical waste characteristics that are similar to those of K019 and F024 wastes: all three wastes having significant concentrations of two-carbon chlorinated organic compounds. Consistent with EPA's methodology for transfer of treatment standards, the Agency is proposing to transfer treatment data from rotary kiln incineration of waste code F024 for the organic constituents in K028. For the inorganic constituents in K028, the Agency is proposing to transfer treatment data from the ash stabilization of K048–K052 and treatment data from the lime and sulfide precipitation of K062. Details on the transfer of performance data and the development of treatment standards for K028 wastes can be found in the BDAT background document for this waste.

The Agency is proposing to transfer performance data for organic constituents in K028 from the incineration of F024. Incineration has been demonstrated to treat K028. The Agency also believes incineration is available because (1) it is commercially available or can be purchased from a proprietor, and (2) it provides substantial reduction of the concentration of organic hazardous constituents. The regulated constituents for K028 wastes and the treatment standards for wastewaters and nonwastewaters are listed at the end of this section.

3. *Standards for K029, K095 and K096.* Review of the available information indicates that K029, K095 and K096 as originally generated according to the listing, are usually nonwastewaters containing relatively high concentrations of chlorinated organics. EPA believes that these wastes may contain concentrations of halogenated organics such that they should already be restricted from land disposal according to the California List rule for Halogenated Organic Compounds (HOCs).

Available information indicates that many K029 wastes are no longer being generated and that K095 and K096 wastes are recycled. EPA is proposing a standard of "No Land Disposal Based on No Generation" for K029 nonwastewaters and "No Land Disposal Based on Recycling" for K095 and K096 nonwastewaters. The Agency is proposing that these "No Land Disposal" treatment standards, only apply to K029, K095 and K096 nonwastewaters as generated (i.e., those wastes as defined in the original listing), and not to nonwastewater residues that may be potentially generated from management of wastes (i.e., "derived-from" nonwastewaters) generated prior to promulgation of the "No Land Disposal" standards.

A specific illustration of this applicability for K095 and K096 for which recycling has been identified as BDAT is as follows: Leachate from land disposal units containing K095 previously generated also carries the label of K095 under the "derived-from" rule. These leachates could be treated by chemical oxidation, precipitation, filtration and/or carbon adsorption prior to discharge. The filtered nonwastewater residuals and the spent carbon would therefore also carry the code of K095 according to "derived-from" rule. In this case, EPA is proposing that the treatment standard of "No Land Disposal Based on Recycling" would not be applicable to these nonwastewater forms of K095.

The Agency's primary rationale for not applying the "No Land Disposal" treatment standards to these residues (as well as other nonwastewaters that may be potentially generated from future remedial actions) is the concern over the differences in waste characteristics of these residues to the nonwastewaters as originally generated. The basis of the "No Land Disposal Based on Recycling" for K095 and K096 was based on the characteristics of the waste as generated. The Agency believes that it is highly likely that at least some portion of these "derived-from" K095 and K096 nonwastewaters may contain a sufficient quantity of impurities that would render it unsuitable for recycling. Recent information suggests that one facility may frequently incinerate K096, as an option to recycling, and may be generating ash residuals that would be considered a "derived-from" nonwastewater residual that may require land disposal. The Agency believes that this ash would not resemble K096 as generated and would not be able to be recycled similar to other K096 wastes.

Further, where the standard is "No Land Disposal Based on No Generation" for K029 nonwastewaters, it is obvious that if a "derived-from" nonwastewater is indeed generated, the basis for the applicability of the standard to that particular waste is no longer substantiated.

Since the Agency anticipates that either of these scenarios have a reasonable potential for occurring for K029, K095 and K096 nonwastewaters, the Agency is proposing that the "No Land Disposal" standards do not apply to "derived-from" nonwastewaters. However, the Agency is specifically soliciting comment on the need for the development of treatment standards for K029, K095 and K096 "derived-from" nonwastewaters. The Agency must promulgate treatment standards for all remaining wastes by May 8, 1990, including these nonwastewater residues generated from the previous management of listed wastes. The Agency believes that numerical standards for these wastes could be developed based on transferring performance data for organics from the incineration of K019 or F024 wastes and transferring performance data for metals (in ash) from an appropriate metal-bearing waste.

As an option to the "No Land Disposal" standards, as well as the option of developing new standards for these "derived-from" K029, K095 and K096 nonwastewaters, the Agency may propose to establish numerical standards for all K029, K095 and K096 "derived-from" nonwastewaters based on a direct transfer of the standards being proposed for K028 wastes (i.e., the standards for all constituents proposed for K028 nonwastewaters would then be applicable to K029, K095 and K096 nonwastewaters).

At this time, the Agency is not proposing treatment standards for the wastewater forms of K029, K095 or K096 (including derived-from wastewaters). The Agency is uncertain that the nonwastewater forms of these wastes were ever previously land disposed. If not, then the Agency believes that there may be no need to develop such standards for "derived-from" K029, K095 and K096 wastewaters. The Agency will develop treatment standards prior to May 8, 1990, if there is an identified need for such standards (i.e. if "derived-from" wastewater forms of the listed waste are proven to be generated). The Agency is currently evaluating the possibility of transferring treatment performance data from K028 wastewaters for these "derived-from" K029, K095 and K096 wastewaters. The Agency has identified several sources of metals precipitation performance data which may be applicable to inorganic constituents.

BDAT TREATMENT STANDARDS FOR K028

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
1,1-Dichloroethane	0.014	(1)
trans-1,2-Dichloroethene	0.014	(1)
Hexachlorobutadiene	2.7	(1)
Hexachloroethane	1.8	(1)
Pentachloroethane	1.9	(1)
1,1,1,2-Tetrachloroethane	1.9	(1)
1,1,2,2-Tetrachloroethane	1.9	(1)
Tetrachloroethene	0.014	(1)
1,1,1-Trichloroethane	0.014	(1)
1,1,2-Trichloroethane	0.014	(1)
Chromium (total)	(1)	1.7
Nickel	(2)	0.048

1 Not applicable.
2 Applicable.

BDAT TREATMENT STANDARD FOR K028

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
1,1-Dichloroethane	0.014	(1)
trans-1,2-Dichloroethene	0.036	(1)
Hexachlorobutadiene	0.014	(1)
Hexachloroethane	0.036	(1)
Pentachloroethane	0.014	(1)
1,1,1,2-Tetrachloroethane	0.014	(1)
1,1,2,2-Tetrachloroethane	0.014	(1)
Tetrachloroethene	0.014	(1)
1,1,1-Trichloroethane	0.014	(1)
1,1,2-Trichloroethane	0.014	(1)
Cadmium	6.4	(1)
Chromium (total)	0.35	(1)

BDAT TREATMENT STANDARD FOR K028—Continued

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Lead	0.037	(1)
Nickel	0.47	(1)

1 Not applicable.

BDAT Treatment Standard for K029

(Nonwastewaters)

NO LAND DISPOSAL BASED ON NO GENERATION

BDAT Treatment Standard for K095 and K096

(Nonwastewaters)

NO LAND DISPOSAL BASED ON RECYCLING

i. *Wastes from Phorate Production.*

K038—Wastewater from the washing and stripping of Phorate production. (2nd)
K039—Filter cake from the filtration of diethyl phosphorodithioic acid in the production of Phorate. (2nd)
K040—Wastewater treatment sludge from the production of Phorate. (2nd)

1. *Introduction.* K038, K039 and K040 are all Second Third wastes that are generated from the production of Phorate, an organophosphorus pesticide. Phorate is the primary constituent of concern in K038 and K040 and has the technical name, phosphorodithioic acid O,O-diethyl S-[(ethylthio) methyl] ester. The primary constituent of concern in K039 is diethyl phosphorodithioic acid. The Agency has data on the incineration of K037 nonwastewaters (wastewater treatment sludge from the production of Disulfoton) that contain the structurally similar organophosphorus pesticide, Disulfoton. The technical name for Disulfoton is phosphorodithioic acid O,O-diethyl S-[(ethylthio) ethyl] ester. The only structural difference between Disulfoton and Phorate is the additional methylene ($-CH_2-$) group in Disulfoton. This slight difference is believed to be insignificant with respect to the ability of the two pesticides to be incinerated. Numerical treatment standards for K037 wastewaters and nonwastewaters were promulgated with the First Third wastes on August 8, 1988, and are not being reopened for comment here. These standards were based on the performance of incineration of K037 nonwastewaters in a rotary kiln and the concentrations of hazardous constituents found in the ash and scrubber water residuals. In today's rule, the Agency is proposing to transfer these treatment standards to K038 and K040. More information on the Agency's procedures for transferring treatment standards can be found in Section III.A.5 of this preamble as well as in the Background Document for these wastes.

2. *Development of Standards.* Currently, EPA has no approved method that can adequately analyze diethyl phosphorodithioic acid in treatment residues. In addition, EPA has not identified any organic constituents in K039 wastes that could be used as a surrogate or as an indicator compound in order to develop numerical standards for K039 wastes. Thus, EPA is proposing incineration as a BDAT treatment methodology for nonwastewater forms of K039. Since diethyl phosphorodithioic acid is structurally similar to Disulfoton and Phorate, EPA believes it can be effectively destroyed by incineration. While the proposed treatment standards for K038, K039 and K040 are all based on the performance of incineration of K037 in a rotary kiln, other treatment technologies such as fluidized bed incineration, fuel substitution units, biodegradation, and solvent extraction, that can achieve these standards are not precluded from use by this rule.

Analysis of the elemental composition of Phorate reveals that the compound contains 11.90% phosphorus and 36.94% sulfur. Depending on the concentration of Phorate in the particular waste, emissions of the oxides of phosphorus and sulfur could be of concern during incineration. The Agency currently believes that hazardous waste combustion units that are equipped with air pollution control devices should be able to effectively control these acidic combustion products. The concentrations of Phorate and diethyl phosphorodithioic acid in K038, K039 and K040 wastes should be relatively low enough that the total concentration of phosphorus and sulfur in the waste will not result in excessive emissions of the respective oxides.

The Agency is currently unaware of any alternative treatment or recycling technologies that have been examined specifically for these wastes and solicits data and comments on these.

For the wastewater forms of K039, EPA is proposing carbon adsorption as BDAT treatment methodology. EPA believes that diethyl phosphorodithioic acid in wastewater forms of K039 can

easily be adsorbed on carbon due to the chemical and physical properties of the compound (such as its molecular weight, elemental composition, and structural form). The spent carbon would be considered by the Agency to be a nonwastewater form of K039 and would be required to be incinerated, as it is a nonwastewater subject to the specified method.

EPA received no comments on the numerical treatment standards for K037 when they were proposed and the Agency therefore promulgated the standards as proposed. To date, no requests for a variance from these standards have been received. The Agency has data that indicates that there are very few generators of K038 and K040, and in fact only one producer of K039 who also produces K038. Information also suggests that these wastes are not typically land disposed. The Agency considered proposing a treatment standard of "No Land Disposal Based on No Generation" for the nonwastewater forms of K038, K039 and K040. However, the Agency prefers to establish numerical standards whenever a transfer of standards from structurally similar compounds can be reasonably performed.

EPA has determined that incineration in a rotary kiln will achieve a level of performance that represents the best demonstrated available treatment technology (BDAT) for nonwastewater forms of K038, K039 and K040. EPA is proposing to regulate only Phorate in wastes identified as K038 and K040. The proposed BDAT treatment standards for these wastes are listed in the tables at the end of this section. Treatment standards for Phorate are based on analysis of total constituent concentration. As previously discussed, incineration as a treatment methodology is proposed as BDAT for K039 nonwastewaters, and carbon adsorption as a treatment methodology is proposed as BDAT for K039 wastewaters.

BDAT TREATMENT STANDARD FOR K038 AND K040

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Phorate	0.1	(1)

1 Not applicable.

BDAT TREATMENT STANDARDS FOR K038 AND K040

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Phorate	0.003	(1)

1 Not applicable.

BDAT Treatment Standard for K039

(Nonwastewaters)

INCINERATION AS A METHOD

BDAT Treatment Standard for K039

(Wastewaters)

CARBON ADSORPTION AS A METHOD

j. Wastes from 2,4-D Production.

K043—2,6-Dichlorophenol wastes from the production of 2,4-D. (2nd)

1. *Introduction.* The listed waste K043 is generated at one facility in the U.S. during the production of 2,4-D. The waste consists of distillation bottoms from the purification of 2,4-dichlorophenol (2,4-DCP), a precursor to 2,4-D. This waste contains high concentrations of halogenated organics (greater than 0.1%) which already subject it to restriction from land disposal from the California List rule for Halogenated Organic Compounds (HOCs).

EPA has identified incineration as an applicable technology for this waste. The process of incineration thermally destroys (oxidizes) the organic constituents in the waste. The Agency recognizes any technology that destroys organics as an applicable technology for this waste.

There is data that suggest that all K043 waste is currently being treated by incineration. Characterization data for K043 waste indicates that the ash concentration is two percent. Therefore, ash residues are generated from the incineration process and, for the purpose of BDAT standards, are classified as nonwastewaters. Scrubber waters are generated as part of the air pollution control system and are classified as wastewaters. Both of these residues must meet the applicable BDAT treatment standards set, prior to placement in a land disposal unit (other than a no-migration unit).

2. *Development of Standards.* The EPA has received data on incineration of K043 waste from the sole generator. This data consists of two treatment data sets for scrubber water and one treatment data set for clarifier solids generated from incineration of K043 waste. EPA has determined that incineration achieves a level of performance that represents BDAT for K043 waste based on treatment performance data. The sole generator of K043 waste uses incineration to treat K043. Therefore, the Agency believes incineration is demonstrated to treat K043. This treatment system is judged to be available to treat K043 because (1) the treatment system is commercially available and (2) the system provides a substantial reduction in the concentration of the BDAT List organic constituents present in K043.

The proposed regulated constituents for K043 and the proposed treatment standards for wastewaters and nonwastewaters are presented in the table at the end of this section. The standards are expressed as total constituent concentrations.

While the Agency did not have treatment performance data for chlorinated dioxins and chlorinated dibenzofurans, it did have characterization data from the sole generator indicating the presence of several of these constituents in K043 waste at very low levels. The Agency also has data on six BDAT chlorinated dioxins and chlorinated dibenzofurans in untreated and treated K099 waste. This waste is generated at the same site as K043 waste, in the next step of the 2,4-D production process. The K099 data indicate concentration levels of less than 1 ppb for each of these six constituents in the treated waste. BDAT standards for these constituents were set at 1 ppb, which represents the analytical limit of detection for these constituents that can be routinely achieved. While K043 data for one of these constituents indicated its presence at a concentration greater than 1 ppb in the untreated waste, the Agency believes that this, as well as any other chlorinated dioxins and chlorinated dibenzofurans, can be effectively treated to levels below the 1 ppb analytical detection limit using rotary kiln incineration, which the Agency has determined to be BDAT for K043 waste. Therefore, because the Agency believes the K043 waste to be sufficiently similar and treatable as K099 waste, the Agency has transferred the BDAT standards for the six chlorinated dioxins and

chlorinated dibenzofurans regulated in K099 to K043. See Section III.A.5. of this proposed rule for a more detailed discussion related to the transfer of treatment standards.

Although the Agency does not have data on 2,4-D and 2,4,5-T in the K043 waste from the sole generator, it does have characterization data on these constituents from a former generator of K043 waste. This former generator used a different process to produce 2,4-D. The sole generator of K043 uses a two-step process to produce 2,4-D. The K043 waste is generated in the first step of this process following the production of 2,4-DCP, prior to production of 2,4-D. Therefore the Agency does not expect 2,.4-D and 2,4,5-T to be present in the K043 waste produced by the sole generator. For potential K043 waste produced by a different process, the Agency believes that the regulation of the proposed BDAT List constituents for K043 will ensure that these constituents will be effectively treated.

BDAT TREATMENT STANDARDS FOR K043

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
2,4-Dichlorophenol	0.38	(1)
2,6-Dichlorophenol	0.34	(1)
Pentachlorophenol	1.9	(1)
Tetrachloroethene	1.7	(1)
Tetrachlorophenols (Total)	0.68	(1)
2,4,5-Trichlorophenol	8.2	(1)
2,4,6-Trichlorophenol	7.6	(1)
Hexachlorodibenzo-p-dioxins	0.001	(1)
Hexachlorodibenzo-furans	0.001	(1)
Pentachlorodibenzo-p-dioxins	0.001	(1)
Pentachlorodibenzo-furans	0.001	(1)
Tetrachlorodibenzo-p-dioxins	0.001	(1)
Tetrachlorodibenzo-furans	0.001	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K043

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total Composition (mg/l)	TCLP(mg/l)
2,4-Dichlorophenol	0.06	(1)
2,6-Dichlorophenol	0.006	(1)
Pentachlorophenol	0.014	(1)
Tetrachloroethene	0.006	(1)
Tetrachlorophenols (Total)	0.02	(1)

BDAT TREATMENT STANDARDS FOR K043—Continued

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total Composition (mg/l)	TCLP(mg/l)
2,4,5-Trichlorophenol	0.025	(1)
2,4,6-Trichlorophenol	0.017	(1)
Hexachlorodibenzo-p-dioxins	0.001	(1)
Hexachlorodibenzo-furans	0.001	(1)
Pentachlorodibenzo-p-dioxins	0.001	(1)
Pentachlorodibenzo-furans	0.001	(1)
Tetrachlorodibenzo-p-dioxins	0.001	(1)
Tetrachlorodibenzo-furans	0.001	(1)

[1] Not applicable.

k. *Second Third K Wastes for Which No Standards Are Proposed.*

K041—Wastewater treatment sludge from the production of Toxaphene. (2nd)

K042—Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T. (2nd)

K097—Vacuum stripper discharge from the Chlordane chlorinator in the production of Chlordane. (2nd)

K098—Untreated process wastewater from the production of Toxaphene. (2nd)

K105—Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes. (2nd)

The Agency has not completed its evaluation of BDAT for these wastes and is not proposing treatment standards at this time. RCRA 3004(g)(6) (42 USC 6924(g)(6)) provides that if EPA fails to set treatment standards for any hazardous waste included in the schedule promulgated on May 28, 1986 (51 FR 19300) by the statutory deadline, such waste may be land disposed in a landfill or surface impoundment only if the facility meets certain statutory requirements and only until May 8, 1990. These requirements have been termed the "soft hammer" provisions. Since the Agency will not promulgate standards for K041, K042, K097, K098 and/or K105 wastes by their statutory deadline, land disposal of these wastes shall be regulated by the "soft hammer" provisions.

In other sections of this preamble, the Agency outlines the regulatory framework for management of these "soft hammer" wastes and discusses its interpretation of the terms "treatment", "facility", and "practical" as stated in RCRA 3004(g)(6).

The Agency believes that the majority of these wastes, as generated, are nonwastewaters (greater than 1.0% TOC) containing relatively high concentrations of chlorinated organics. In addition, EPA believes that the majority of these wastes contain high enough concentrations of halogenated organics (greater than 0.1%), that they should already be restricted from land disposal according to the California List rule for Halogenated Organic Compounds (HOCs).

Information available to the Agency indicate that generation of these wastes may have ceased. However, the Agency believes that there will be a need to develop numerical treatment standards for this treatability group because of the probability of requiring disposal for some of the out-of-date pesticides (as defined by § 261.33) and residues from previous management of these wastes. In order to reduce the number of anticipated variance petitions from this type of situation, EPA believes that numerical standards are the preferred option. The strategy for the transfer of standards is also discussed in the section discussing U and P Halogenated Organics Treatability Group.

1. *Toxaphene and Chlordane Wastes.* The Agency has determined that K041, K097 and K098 wastes are representatives of a treatability group that also includes wastes identified as D015, K032, K033, K034, P123 (Toxaphene) and U036 (Chlordane). This group of wastes contain varying concentrations of the multiple component halogenated pesticides toxaphene and/or chlordane. The reasoning behind this grouping can be found in the discussion of Multiple Component Halogenated Pesticides for U and P wastes.

EPA may also propose treatment standards based on the transfer of performance data from the incineration of PCBs (polychlorinated biphenyls). Toxaphene and Chlordane are similar to PCBs, in that they all are mixtures of many isomers of polyhalogenated organics. Typical analytical procedures for all three of these involve pattern recognition of these multiple components using GC/ECD analyses. The Agency has not completed the analysis of any of these data, and is not proposing standards for these wastes at this time.

2. *2,4,5-T Wastes.* While K042 wastes are from the production of 2,4,5-T, the listing appears to indicate that the wastes should be expected to contain tetrachlorobenzene. The Agency anticipates that numerical standards can be transferred from the development of standards for K105 (see the discussion of this waste that follows)

and possibly from the development from chlorinated phenolic wastes such as K043 or K099 (due to structural similarities of 2,4,5-T with the chlorinated phenolics contained in these wastes. The Agency questions whether a numerical standard for nonwastewaters is even necessary for these wastes and is soliciting comments on the possibility of establishing a "No Land Disposal Based on No Generation" for K042 wastes.

3. *Chlorobenzene Wastes.* K105 wastes, along with K085 wastes (distillation or fractionation column bottoms from the production of chlorobenzenes) are both listed wastes from the production of chlorobenzenes. K085 was originally scheduled for regulation with the First Third wastes. However, EPA did not propose or promulgate treatment standards for K085 wastes prior to August 8, 1988, due to the concern over the presence of greater than 50 ppm of Poly-Chlorinated Biphenyls (PCBs). The Office of Toxic Substances (OTS) currently requires waste containing greater than 50 ppm of PCBs to be incinerated in a TSCA approved PCB incinerator. OTS has some PCB test burn data at a facility that was also incinerating K085. EPA intends to develop standards for both K085 and K105 wastes based on transfer of PCB incineration performance data.

PCBs were often mixed with a mix of tri- and tetra-chlorobenzenes to form the mixtures that were used as PCB transformer fluids (Askarels). EPA anticipates proposing numerical treatment standards for the chlorobenzene constituents in K085 and K105 wastes as well as all chlorobenzene wastes based on direct transfer of incineration efficiencies for the chlorobenzenes contained in the PCB wastes. This information is currently considered TSCA confidential business information (CBI) and appropriate TSCA clearance procedures must be followed prior to use for matters involving only RCRA authority. Since these data will not be available in time for proposal of K085 or K105 with the Second Third wastes, land disposal of K085 wastes (as promulgated with the First Third wastes) shall continue to be regulated under the "soft hammer" provisions and K105 wastes will also be subject to these provisions.

If these data remains CBI, the Agency may not have sufficient time to develop a treatment standard for these wastes prior to May 8, 1990. The statutory requirements of RCRA referred to as the "hard hammer" will then restrict the waste from land disposal. However, if performance data on the incineration of K085 and other PCBs are submitted in response to this proposal as public information, there may be sufficient time to develop treatment standards prior to May 8, 1990. However, as an alternative, EPA may decide to allow the statutory provisions of the "hard hammer" to take effect, because 1986 data indicate that these wastes may no longer be land disposed. These data appear to conflict with the data submitted by the facility incinerating K085, since ash generated from incineration of K085, which remains K085 under the derived from rule, would be expected to require land disposal.

Other Organophosphorus Wastes.

K036—Still bottoms from toluene reclamation distillation in the production of Disulfoton (lst)
P039—Disulfoton (lst)
P040—Diethyl 2—pyrazinyl phosphorothioate (2nd)
P041—Diethyl-p-nitrophenyl phosphate (lst)
P043—Diisopropylfluorophosphate (2nd)
P044—Dimethoate (2nd)
P062—Hexaethyl tetraphosphate (2nd)
P071—Methyl parathion (lst)
P085—Octamethyl pyrophosphoramide (2nd)
P089—Parathion (lst)
P094—Phorate (lst)
P097 Famphur (lst)
P109—Tetraethyl dithiopyrophosphate (3rd)
P111—Tetraethyl pyrophosphate (2nd)
U058—Cyclophosphamide (2nd)
U087—O,O-Diethyl S-methyl dithiophosphate (3rd)
U235—tris-(2,3-Dibromopropyl) phosphate (2nd)

1. *Introduction.* EPA has grouped K036, P039, P040, P041, P043, P044, P062, P071, P085, P089, P094, P097, P109, P111, U058, U087 and U235 wastes together due to similarities in structure and elemental content of the primary constituent of concern in each waste. All of the chemicals represented by these waste codes are organophosphorus compounds.

EPA has divided the U and P wastes into two groups. The first group includes P039, P071, P089, P094, P097 and U235. The Agency has determined that the organophosphorus chemicals represented by these codes are structurally similar to the organophosphorus pesticide, Disulfoton. Therefore, the Agency is proposing to directly transfer numerical standards from the incineration of K037 wastes (wastewater treatment sludge from the production of Disulfoton) to each of the individual U and P chemicals. Treatment standards for K037 wastewaters and nonwastewaters were promulgated on August 8, 1988. More information on the Agency's procedures for transferring treatment standards can be found in Section III.A.5 of this preamble as well as in the Background Document for these wastes.

2. *Development of Standards*—a. *Standards for P039, P071, P089, P094, P097 and U235.* The transfer of treatment standards for Disulfoton from K037 is particularly appropriate for P039 (Disulfoton) and for P094 (Phorate). The only structural difference between Phorate and Disulfoton is the additional methylene ($-CH_2-$) group in Disulfoton. This slight difference is believed to be insignificant with respect to the ability of the two pesticides to be incinerated. EPA thus believes the structural similarity is sufficient to support the transfer of standards. In addition, the Agency believes that Disulfoton is one of the most difficult organophosphorus chemicals in this entire group of organophorus compounds to incinerate. Given that Disulfoton can be effectively treated by incineration and that the chemicals in this group are structurally similar, the Agency believes that all the other wastes in this section can be effectively treated by incineration. Therefore, the Agency believes that the performance achievable by incineration represents BDAT for all of the above wastes and is proposing to transfer these standards to P039, P071, P089, P094, P097 and U235.

While the Agency believes that the K037 standards can be transferred to these wastes, it understands that a particular U or P waste may not contain the same constituents or concentration of the specific U or P chemical that were in the K037 waste that EPA incinerated. EPA also understands that the composition of U and P wastes can vary significantly. However, given the statutory time constraints that exist, the Agency cannot possibly test every single U and P chemical, nor can it be expected to account for this variability in waste characteristics. The Agency is therefore soliciting specific data on treatment of these wastes. The Agency also believes that the transfer of standards is the best alternative for these organophosphorus wastes.

b. Standards for P040, P041, P043, P044, P062, P085, P109, P111, U058 and U087. As with the first group of wastes, the Agency believes that incineration represents BDAT for these wastes. However, the Agency does not believe that numerical treatment standards can be established for these chemicals at this time. The major problem in establishing numerical standards for these chemicals is that EPA does Not currently have an analytical method that can analyze these chemicals in these treatment residues. In addition, EPA has not identified any organic constituents

in these wastes that could be used as a surrogate or as an indicator compound in order to develop numerical standards for these wastes. The Agency recognizes that there may be methods that may be used for the concentrated chemicals to verify purity and determine product specifications. However, there are often no analytical procedures for the measurement of trace quantities of these chemicals either in environmental samples or in residues from treatment. As a result, a numerical treatment standard for these constituents is apparently not feasible. While there does not appear to be an approved method that is capable of detecting these compounds in incinerator ash, the Agency is investigating methods used by other EPA offices which may detect these compounds on food or in water. Since Section 3004(m) allows the Agency to establish either levels or methods of treatment, the Agency is proposing incineration as a method of treatment for this second group of U and P wastes. It is also important to point out that EPA requires that an incinerator burning any RCRA hazardous waste must meet the requirements specified in 40 CFR Part 264 Subpart O or Part 265 Subpart O.

P041, P043, P044 and P111 hydrolyze (break down quickly) in water making them difficult to analyze in wastewater forms of these wastes. Even though these compounds hydrolyze readily in water, the Agency lacks data on the effects of the hydrolysis products on the environment and does not have an approved analytical method to measure those products. Therefore, the Agency is not proposing hydrolysis as a method of treatment for these wastes. P062, U058, and P085 can only be analyzed by HPLC (High Pressure Liquid Chromatography). When compounds cannot be analyzed by GC, EPA is reluctant to transfer standards based on GC analysis unless practical equivalency can be demonstrated. In addition, since reference analytical compounds do not appear to be available for the chemicals represented by P040, P109 and U087, the Agency anticipates that problems with compliance and enforcement would preclude numerical standards from being proposed at this time.

As concentrated off-spec chemicals, most of the U and P wastes are toxic pesticides and contain relatively high levels of phosphorous and/or sulfur. Therefore, combustion units used for treating these wastes must be equipped with air pollution control devices that will control the combustion products of phosphorus and sulfur. Additionally, U058 (cyclophosphamide) and U235 (tris-[2,3-dibromopropyl] phosphate) are halogenated organic compounds. The elemental chlorine content of U058 is 27%, and the elemental bromine content of U235 is 69%. If concentrated, these wastes would be subject to the California list restrictions.

Carbon adsorption as a method of treatment for the wastewater forms of this second group of organophosphorus wastes is proposed as BDAT. The Agency believes that the wastewater forms of these wastes can easily be adsorbed due to the branched and ionic nature of their structures. After the adsorption, and before disposal, the carbon must be incinerated, and the standards for the nonwastewaters must be met.

The Agency believes that incineration and carbon adsorption are available because: (1) These technologies are commercially available or can be purchased from a proprietor and (2) these technologies achieve substantial reduction and removal of organic hazardous constituents in wastes judged to be more difficult to treat than those organics represented by these U and P chemicals.

Many of the U and P wastes can exist as concentrated off-spec chemicals. Depending on other constituents present, these forms of the wastes could potentially be dissolved in a suitable waste solvent and incinerated in a liquid injection system. However, EPA believes that in order to reduce the risk associated with dissolving these highly toxic chemicals, incineration in a rotary kiln may be a preferred choice of incineration unit (although this proposed rule allows any method of incineration). EPA is not precluding the dissolution of these chemicals. In cases where there is a significant volume of these chemicals, dissolution in a solvent may be necessary to reduce the emission of phosphorus and sulfur oxides or to increase the heat content (BTUs) of the waste in general. Due to the toxicity of these wastes, and the likelihood of phosphorus and sulfur oxide emissions, EPA is specifically requesting comment on the applicability of these wastes for fuel substitution.

The Agency is currently unaware of any alternative treatment or recycling technologies that have been examined specifically for these wastes and solicits data and comments on these. In addition, because highly specialized recovery systems geared to the recovery of the specific pesticide would probably be required, it is unlikely that the Agency would consider proposing a treatment standard of "No Land Disposal Based on Recycling". The proposed rule, in any case, does not preclude recycling (provided the recycling does not involve burning as fuel or use constituting disposal; see § 261.33).

c. Standard for K036 wastewaters. On August 8, 1988, a treatment standard of "No Land Disposal Based on No Generation" was promulgated for nonwastewater forms of K036. While the same treatment standard was originally proposed for wastewater forms of K036, it was not promulgated because the Agency determined that K036 wastewaters could be generated as leachate from previously land disposed K036 (i.e., the basis of the standard, "no generation" of wastewaters, was not valid). Land disposal of K036 wastewaters is thus currently regulated under the "soft hammer" provisions. Although today's rule proposes standards for these wastewaters based on a direct transfer of numerical treatment standards from K037 wastewaters, the Agency is not reopening the comment period for the promulgated treatment standards for K036 nonwastewaters. The Agency has established variance procedures for those facilities that must land dispose these wastes and cannot meet the promulgated treatment standards. These procedures are outlined in other sections of today's rule.

BDAT TREATMENT STANDARDS FOR K036

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total Composition (mg/l)	TCLP (mg/l)
Disulfoton	0.003	(1)

1 Not applicable.

BDAT TREATMENT STANDARDS FOR U AND P ORGANOPHOSPHORUS WASTES P039, P071, P089, P094, P097 AND U235 RESPECTIVELY

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Disulfoton (P039)	0.1	(1)
Methyl parathion (P071)	0.1	(1)
Parathion (P089)	0.1	(1)
Phorate (P094)	0.1	(1)
Famphur (P097)	0.1	(1)
tris-(2,3-Dibromopropyl) phosphate (U235)	0.1	(1)

1 Not applicable.

BDAT TREATMENT STANDARDS FOR U AND P ORGANOPHOSPHORUS WASTES P039, P071, P089, P094, P097 AND U235 RESPECTIVELY

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Disulfoton (P039)	0.003	([1])
Methyl parathion (P071)	0.003	([1])
Parathion (P089)	0.003	([1])
Phorate (P094)	0.003	([1])
Famphur (P097)	0.003	([1])
tris-(2,3-Dibromopropyl) phosphate (U235)	0.003	([1])

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR U AND P ORGANOPHOSPHORUS WASTES P040, P041, P043, P044, P062, P085, P109, P111, U058 AND U087

[Nonwastewaters]

INCINERATION AS A METHOD

BDAT TREATMENT STANDARDS FOR U AND P ORGANOPHOSPHORUS WASTES P040, P041, P043, P044, P062, P085, P109, P111, U058 AND U087

[Wastewaters]

CARBON ADSORPTION AS A METHOD

m. Phthalate U and P Wastes

U028—Bis-(2-ethylhexyl) phthalate (2nd)
U069—Di-n-butyl phthalate (3rd)
U088—Diethyl phthalate (3rd)
U102—Dimethyl phthalate (3rd)
U107—Di-n-octyl phthalate (2nd)
U190—Phthalic anhydride (3rd)

BDAT standards for all of these U and P wastes are proposed based on transfer of data on the performance of rotary kiln incineration for K024 nonwastewaters (distillation bottoms from the production of phthalic anhydride from naphthalene). Treatment standards for K024 wastewaters and nonwastewaters were promulgated with the First Third wastes on August 8, 1988. These standards were based on the performance of incineration of K024 nonwastewaters in a rotary kiln and the concentrations of hazardous constituents found in the ash and scrubber water residuals. In today's rule, the Agency is proposing to transfer these treatment standards to U028, U069, U088, U102, U107 and U190.

Except for U190 (i.e., phthalic anhydride; which forms phthalic acid by a simple reaction with water) all of these U and P wastes are esters of phthalic acid. These esters are commonly referred to as phthalates. The difference between these compounds is merely the number of methylene ($-CH_2-$) hydrocarbon groups on each ester group (i.e., diethyl phthalate has one more methylene on each ester group than dimethyl phthalate). EPA believes that these structural similarities, coupled with the fact that all of these compounds are anticipated to be easier to burn than phthalic acid, are sufficient evidence to support the transfer of the performance data for phthalic acid (from K024) to these individual U and P phthalates. Therefore, the Agency intends to propose treatment standards for each individual compound based on these data.

These U and P wastes are grouped as "phthalates" in order to solicit specific comments from manufacturers and users of phthalates regarding standards for these wastes. Several petitions have been submitted to EPA to remove certain phthalates from TSCA and SARA lists of hazardous materials. In addition, analyses for these constituents are often complicated by the high probability of cross-contamination by these constituents in the laboratory. They are common contaminants in plastics (such as plastic gloves used during the analyses) due to their presence as plasticizers.

While the proposed treatment standards for these U and P phthalate wastes are based on the performance of incineration of K024 in a rotary kiln, other treatment technologies such as fluidized bed incineration, fuel substitution units, biodegradation, and solvent extraction, that can achieve these standards are not precluded from use by this rule. Since all of these compounds consist only of carbon, hydrogen and oxygen, it is highly likely that these wastes could go to fuel substitution or to cement kilns as alternatives to incineration. The Agency is currently unaware of any alternative treatment or recycling technologies that have been examined specifically for these wastes and solicits data and comments on these.

EPA received no comments on the numerical treatment standards for K024. To date, no requests for a variance from these standards have been received. The Agency has data that indicate that there are relatively few generators of these U and P phthalate wastes. Information also suggests that most of these wastes are not typically land disposed. The Agency considered proposing a treatment standard of "No Land Disposal Based on No Generation" for the nonwastewater forms of those wastes that were not land disposed in 1986. However, the Agency prefers to establish numerical standards whenever a transfer of standards can be reasonably performed.

EPA has determined that incineration in a rotary kiln will achieve a level of performance that represents the best demonstrated available treatment technology (BDAT) for nonwastewater forms of the U and P phthalate wastes. EPA promulgated treatment standards for K024 wastes based on analysis for phthalic acid and is proposing the same standards for wastes identified as K023, K093, and K094. While phthalic anhydride is the primary hazardous constituent in K023, K024, K093, and K094, it is readily hydrolyzed by water to phthalic acid. Thus, phthalic anhydride cannot be easily analyzed. However, there is an analytical method for phthalic acid. Thus, the treatment standards for K023, K024, K093, and K094 wastewaters and nonwastewaters are based on analyses for phthalic acid. This constituent, although not listed as a hazardous constituent in Part 261 Appendix VIII, was chosen as a surrogate compound for phthalic anhydride. EPA is also proposing the same BDAT treatment standards for wastes identified as U190, phthalic anhydride. The proposed standards for the other U and P phthalate wastes, are listed in the tables at the end of this section and are derived from a direct transfer of the numerical value for phthalic acid to the respective phthalate ester. The Agency believes that the relatively high numerical values for each individual phthalate will account for potential contamination problems (as previously discussed) that are anticipated from handling wastes that contain very high concentrations of these phthalates (i.e., the U and P wastes). All standards are based on analysis of total constituent concentration.

BDAT TREATMENT STANDARD FOR U AND P PHTHALATES U028, U069, U088, U102, U107 AND U190 RESPECTIVELY

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Bis-(2-ethylhexyl) phthalate (U028)	28	(1)
Di-n-butyl phthalate (U069)	28	(1)
Diethyl phthalate (U088)	28	(1)
Dimethyl phthalate (U102)	28	(1)
Di-n-octyl phthalate (U107)	28	(1)
Phthalic anhydride (U190) . . . (reported as phthalic acid)	28	(1)

[1] Not applicable.

BDAT TREATMENT STANDARD FOR U AND P PHTHALATES U028, U069, U088, U102, U107 AND U190 RESPECTIVELY

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Bis-(2-ethylhexyl) phthalate (U028)	0.54	(1)
Di-n-butyl phthalate (U069)	0.54	(1)
Diethyl phthalate (U088)	0.54	(1)
Dimethyl phthalate (U102)	0.54	(1)
Di-n-octyl phthalate (U107)	0.54	(1)
Phthalic anhydride (U190) . . . (reported as phthalic acid)	0.54	(1)

[1] Not applicable.

9. EPA's Strategy for Transferring Standards for All Remaining U and P Wastes

This section of today's preamble presents a discussion of the approaches and options that the Agency is considering for establishing BDAT treatment standards for all of the remaining "U" and "P" wastes that have not been proposed to date or are proposed in other sections of today's preamble. This discussion is intended to give advance notice to the regulated community and to provide an opportunity to comment on these approaches and to submit data that may help in developing such standards. At this time, the Agency is not proposing treatment standards for any of the wastes listed in this section. Please identify comments on this material with the heading "Comments on EPA's approach to remaining wastes".

The Agency is specifically soliciting comments on the approach to developing treatment standards for each of the individual wastes or treatability groups. Comments and data on specific treatment technologies for specific wastes or subcategories should include a description of the generation process or processes, complete chemical and physical analyses of the wastes and treatment residuals (including all appropriate QA/QC information), as well as technical descriptions of the treatment technologies including design and operating conditions.

a. Background and General Issues. Today's rule addresses several problems pertinent to the development of numerical treatment standards for "U" and "P" wastes [as defined in 40 CFR Section 261.33(e) and (f)]. In this section, the Agency presents options to resolve these problems. Other issues such as deficiencies in waste characterization, analytical complications, sporadic generation patterns, infrequent land disposal, potential necessity for dissolution prior to treatment, and difficulties in evaluation of recycling potential, are also presented.

The Agency believes that numerical treatment standards can be developed for the majority of "U" and "P" wastes based on existing data. EPA has grouped all of the "U" and "P" wastes into various treatability groups based on similarities in elemental composition (e.g., carbon, halogens and metals) and the presence of key functional groups (e.g., phenolics, esters, and amines) within the structure of the individual U or P chemical. In development of these treatability groups, the Agency also accounted for physical and chemical factors that are known to effect the selection of treatment alternatives and to effect the performance of the treatment, such as volatility and solubility. The use of the chemical (e.g. pesticides and pharmaceuticals) was also important in establishing these groups. By emphasizing the use of these chemicals, it allows the Agency to identify issues specific on these groups of chemicals, to target potential sources of data, and to solicit comments and data from specific industries and public interest groups.

1. Waste Characterization. Let us first examine the characteristics and nature of these wastes. EPA has designated a specific U or P waste code number referring to the specific chemical constituent associated with that code. EPA's listing sorts these wastes into two general hazard categories. Those wastes identified as P wastes are defined as "acute hazardous" wastes and those wastes identified as U wastes are defined as "toxic" wastes. The Agency has determined that these distinctions generally have no bearing on treatability nor do they contribute to the development of the treatability groups identified in this section.

As listed, these wastes are typically commercial products, off-specification species, container residues, or spill residues. These wastes can also exist as wastewater or nonwastewater treatment residues based on the derived-from or mixture rules. In addition, they are often identified as contents of lab packs. Within these lab packs, they have been identified as various complex mixtures of discarded concentrated chemicals, contaminated laboratory samples, old analytical laboratory standards and contaminated equipment.

EPA understands that the composition of these wastes can vary significantly. It recognizes that some U and P wastes may not contain the same constituents or concentration of the specific U or P chemical that was present in the waste from which numerical standards may be proposed to be transferred. However, given the statutory time constraints that exist, the Agency cannot possibly test every single U and P chemical nor can it expect to account for the anticipated variability in waste characteristics. The Agency believes that the transfer of data and development of numerical standards is the best alternative for these U and P wastes, with treatment variances available for exceptional cases, such as for wastes identified as contaminated soil and debris.

In order to comply with the land disposal restrictions requirements of HSWA, the Agency is considering proposing a method of treatment as opposed to a numerical treatment standard for wastes identified as contaminated equipment or debris. A detailed discussion regarding our rationale to specify a treatment technology is presented in the following section.

2. Analytical Complications. One significant problem with setting standards for U and P wastes is that for many, EPA does not have an analytical method that is approved by the Office of Solid Waste. For others, there are apparently no analytical methods that are known to exist. The Agency recognizes (that these compounds do exist and that there are methods that may be used for the concentrated

chemicals to verify purity and determining product specifications. However, there are often no analytical procedures for the measurement of trace quantities of these chemicals either in environmental samples or in residues from treatment. As a result, a numerical treatment standard for some of these constituents is apparently not feasible.

In addition, many of these chemicals either react or degrade with water or leaching solutions, preventing the direct measurement of the U or P constituent in treatment residues. Whenever possible, EPA considered the possibility of using the reaction products or degradation products to develop numerical standards for these wastes (e.g. cyanide for sodium cyanide and lead for lead phosphate). However, in some instances, there are apparently no "indicator" compounds that can be measured. An example of this problem is U223, toluene diisocyanate (TDI). Currently, EPA has no standard method to characterize TDI. TDI is a constituent that polymerizes very easily and hydrolyzes to become a toluene diamine (TDA) when reacted with water. Unfortunately, the Agency is unable to use TDA as an indicator of TDI presence, since EPA also lacks an approved standard method for TDA. The Agency, however, is currently examining available methods that would enable the characterization of TDI or identification of another indicator. If EPA is unable to develop a standard method or identify an indicator for TDI (U223), there will not be a way of verifying the performance of treatment based on analysis of treatment residues for TDI. Therefore, a numerical treatment standard for U223 may not be technically feasible. The Agency solicits information about analytical methods currently used by manufacturers and formulators for those U and P chemicals that EPA has no SW846 analytical methods.

3. Current Generation and Land Disposal Practices. The Agency has data that indicates that for some U and P wastes there may be relatively few generators. Information from the 1986 TSDR survey also suggests that some of these U and P wastes are not typically land disposed. The Agency considered proposing a treatment standard of "No Land Disposal Based on No Generation" for these. However, the Agency prefers to establish numerical standards whenever a transfer of standards can be reasonably performed.

This approach is particularly important for U and P wastes for several reasons. In particular, the sporadic nature of generation suggests that these wastes may be generated at any time and thus may require land disposal of treatment residues. While establishing a treatment standard of "No Land Disposal Based on No Generation", does provide an alternative of a petition for a variance to generators (see section III.A.6.), the Agency believes that there is a higher probability that a specific U or P waste may be sporadically generated rather than some of the F or K wastes for which the standard was originally developed. However, the Agency does believe that for some U and P wastes that have a very low probability of generation, this alternative may be feasible.

4. Dissolution for Treatment. Some of the discarded or off-specification U and P chemicals, when existing as concentrated chemicals or mixtures, in some circumstances, may be dissolved in a suitable solvent prior to treatment. Concentrated organic liquids and solids could be dissolved in an appropriate organic solvent (or waste solvent) and then incinerated in a liquid injection system. Concentrated inorganic chemicals and metal salts could be dissolved in water or acidic media and then be chemically oxidized or reduced, and precipitated as an insoluble salt.

EPA believes that to reduce the risk associated with dissolving these highly toxic chemicals, incineration of low volumes of these concentrated organic chemicals in a rotary kiln may be preferred. In addition, EPA is concerned about potential increases in waste volume due to this practice. However, EPA is not precluding the dissolution of these chemicals where this dissolution is environmentally the best practice. In cases where there is a significant volume of these chemicals, dissolution in a solvent may be necessary in order to reduce the acidic emission of halides or oxides of phosphorus, nitrogen, or sulfur. The dissolution may also be necessary to increase the heat content of the waste.

5. Recycling Potential. The Agency believes that recycling for some of the U and P wastes may be feasible. For example, an off-spec product can undergo further on-site processing rather than land disposal, can be sold as a low grade chemical product in the market, or can be exchanged as a raw material to other industries participating in a hazardous waste exchange program. Other U and P wastes may require further treatment prior to recycling (e.g., U and P wastes that tend to polymerize or solidify may need to be fluidized prior to reuse). Certain U and P wastes may not be amenable to recycling for a variety of reasons. The Agency solicits data and information to identify those U and P wastes amenable to recycling. EPA does not intend to preclude the recycling of any of these wastes.

b. Halogenated Organics Treatability Groups. Many of the U and P wastes fall under a general treatability group of Halogenated Organics. Within this general group are six different individual treatability groups based primarily on similarities in their structure, their industrial use or generation, and the presence of certain functional groups. Various issues associated with each treatability group are discussed below. The U and P chemicals are grouped into chlorinated aliphatics, chlorinated phenols, single component halogenated pesticides, multiple component halogenated pesticides, chlorobenzene wastes, and miscellaneous halogenated organic wastes, which are presented in Table 1 through Table 6.

For the chlorinated aliphatics treatability group, EPA anticipates transferring performance data from the rotary kiln incineration of K019 or F024 wastes to these chemicals. The Agency believes that, since F024 wastes are specifically wastes from the production of chlorinated aliphatics and K019 contained high concentrations of many of the specific U and P chlorinated aliphatics, this transfer is justified.

The solubility of chlorinated phenols, which will affect wastewater treatment, depends heavily on the pH. Data available from the incineration of K043 wastes (from the production of 2,4-D) show the effectiveness of incineration for various halogenated phenolics. The Agency anticipates extrapolating data from K043 wastes to the other phenols.

Some of the single component halogenated pesticides listed in table 3 are no longer marketed or are banned from use. The Agency will analyze data available to the Office of Pesticides and Toxic Substances on the generation and treatment of these wastes.

The multiple component halogenated pesticide wastes are generally restricted and are produced for use outside of the United States. Treatment standards for wastes from the production of these multiple component halogenated pesticides are discussed elsewhere in this preamble. Treatment standards for P123 and U036 are expected to be similar to those promulgated for those wastes.

The Agency anticipates extrapolating performance data from incineration of PCB wastes to all chlorobenzenes. The PCBs burned in this test reflect the mixture of tri- and tetra-chlorobenzenes used in transformers (Askarels). Further

discussion of the transfer of this data can be found elsewhere in this preamble.

For the miscellaneous halogenated organic wastes, the Agency expects to transfer data from ethylene dibromide, due to its low heat of combustion. Because there is no other correlation which can be used for this broad category of wastes, the Agency believes that basing the treatment standard on one of the most difficult to incinerate wastes represents the best option. Halogens or hydrogen halides can be expected to be emitted from hazardous waste incinerators, but can be controlled by the use of scrubbers and other air pollution control equipment.

TABLE 1.—CHLORINATED ALIPHATIC WASTES

U044—Chloroform	(1st)
U074—1,4-Dichloro-2-butene	(1st)
U076—1,1-Dichloroethane	(3rd)
U077—1,2-Dichloroethane	(1st)
U078—1,1-Dichloroethylene	(1st)
U079—1,2-Dichloroethylene	(3rd)
U080—Methylene chloride	(2nd)
U083—1,2-Dichloropropane	(2nd)
U084—1,3-Dichloropropene	(3rd)
U131—Hexachloroethane	(2nd)
U184—Pentachloroethane	(3rd)
U208—1,1,1,2-Tetrachloroethane	(2nd)
U209—1,1,2,2-Tetrachloroethane	(1st)
U210—Tetrachloroethylene	(1st)
U211—Carbon tetrachloride	(1st)
U226—1,1,1-Trichloroethane	(1st)
U227—1,1,2-Trichloroethane	(1st)
U228—Trichloroethylene	(1st)
U243—Hexachloropropene	(3rd)

TABLE 2.—CHLORINATED PHENOLIC WASTES

U039—p-Chloro-m-cresol	(3rd)
U048—2-Chlorophenol	(3rd)
U081—2,4-Dichlorophenol	(3rd)
U082—2,6-Dichlorophenol	(3rd)
U240—2,4-D salts and esters	(3rd)

TABLE 3.—SINGLE COMPONENT HALOGENATED PESTICIDE WASTES

P004—Aldrin	(1st)
P037—Dieldrin	(1st)
P050—Endosulfan	(1st)
P051—Endrin	(3rd)
P057—2-Flouroacetamide	(2nd)
P058—Fluoracetic acid, sodium salt	(1st)
P059—Heptachlor	(1st)
P060—Isodrin	(2nd)
U038—Chlorobenzilate	(3rd)
U060—DDD	(2nd)
U061—DDT	(1st)
U062—Diallate	(2nd)
U066—1,2-Dibromo-3-chloropropane	(1st)
U097—Dimethylcarbomyl chloride	(2nd)
U128—Hexachlorobutadiene	(2nd)
U129—Lindane	(1st)
U130—Hexachlorocyclopentadiene	(1st)
U132—Hexachlorophene	(3rd)
U142—Kepone	(2nd)
U185—Pentachloronitrobenzene	(1st)
U247—Methoxychlor	(3rd)

TABLE 4.—MULTIPLE COMPONENT HALOGENATED PESTICIDE WASTES

P123—Toxaphene	(1st)
U036—Chlordane, technical	(1st)

TABLE 5.—CHLOROBENZENE WASTES

U037—Chlorobenzene	(1st)
U070—1,2-Dichlorobenzene	(2nd)
U071—1,3-Dichlorobenzene	(3rd)
U072—1,4-Dichlorobenzene	(3rd)
U183—Pentachlorobenzene	(3rd)
U207—1,2,4,5-Tetrachlorobenzene	(3rd)
U127—Hexachlorobenzene	(2nd)

TABLE 6.—MISCELLANEOUS HALOGENATED ORGANIC WASTES

P016—bis-(Chloromethyl) ether	(1st)
P017—Bromoacetone	(3rd)
P023—Chloroacetaldehyde	(3rd)
P024—p-Chloroaniline	(3rd)
P026—1-(o-Chlorophenyl) thiourea	(2nd)
P027—3-Chloropropionitrile	(2nd)
P028—Benzyl chloride	(3rd)
P118—Trichloromethanethiol	(3rd)
U006—Acetyl chloride	(3rd)
U017—Benzal chloride	(3rd)
U020—Benzenesulfonyl chloride	(2nd)
U024—bis-(2-Chloroethoxy) methane	(3rd)
U025—Dichloroethyl ether	(2nd)
U026—Chloronaphazine	(2nd)
U027—bis-(2-Chloroispropyl) ether	(3rd)
U030—4-Bromophenyl phenyl ether	(3rd)
U034—Trichloroacetaldehyde	(3rd)
U041—n-Chloro-2,3-epoxypropane	(1st)
U042—2-Chloroethyl vinyl ether	(3rd)
U046—Chloromethyl methyl ether	(1st)
U047—2-Chloronaphthalene	(2nd)
U049—4-Chloro-o-toluidine hydrochloride	(2nd)
U067—Ethylene dibromide	(1st)
U068—Dibromomethane	(3rd)
U073—3,3'-Dichlorobenzidine	(2nd)
U138—Iodomethane	(2nd)
U156—Methyl chlorocarbonate	(3rd)
U158—4,4-Methylene-bis-(2-chloroaniline)	(1st)
U192—Pronamide	(1st)
U222—o-Toluidine hydrochloride	(3rd)
U225—Bromoform	(3rd)

c. Combustible U and P Waste Treatability Groups. BDAT standards for these wastes are anticipated to be based on incineration data available to the Agency. Since these wastes have very high BTU values, they might be expected to be well suited for fuel substitution purposes. However, despite the fact that these compounds consist only of hydrogen and carbon and have a high heating value, some of these wastes may be unacceptable for fuel substitution due to their relatively high toxicity.

Data from the incineration of K024 (Distillation bottoms from the production of phthalic anhydride from naphthalene) is anticipated to be extrapolated to each individual polynuclear aromatic hydrocarbon. The structural similarities between these polynuclear aromatics are believed to be sufficient to support the transfer of these standards (i.e., they are hydrocarbons generally consisting of fused benzene rings). Detection limits for those compounds that have standard analytical methods will be checked against the data for K024 wastewaters and nonwastewaters. Information suggests that the majority of these waste codes are not typically land disposed and may not be generated. One option open to the Agency for these codes is "No Land Disposal based on No Generation". However, since U and P wastes are generated sporadically, the Agency prefers to determine numerical standards whenever a reasonable transfer of performance data can be supported.

It is doubtful that recycling is available for these wastes. Highly specialized recovery systems, geared to recovery of a specific compound, would probably be required. Polynuclear aromatic hydrocarbons are grouped together to solicit specific comments regarding their toxicity and its relation to the standards for these wastes. Standards for these wastes are anticipated to be complicated by the fact that these compounds are generally more toxic than most hazardous chemicals. In fact, some are listed as Class A carcinogens. In addition, analyses for these constituents are complicated by the possibility that these compounds are generated during the combustion process as products of incomplete combustion. Other hazardous and nonhazardous wastes may actually contribute to the formation of these constituents. Therefore, it may be difficult to establish BDAT standards for these compounds which may be generated during the incineration process.

TABLE 7.—AROMATIC AND POLYCYCLIC HYDROCARBON WASTES

U005—2-Acetylaminofluorene	(2nd)
U016—Benz(c)acridine	(1st)
U018—Benz(a)anthracene	(1st)
U019—Benzene	(1st)
U022—Benzo(a)pyrene	(1st)
U050—Chrysene	(1st)
U055—Cumene (isopropylbenzene)	(3rd)
U056—Cyclohexane	(3rd)
U063—Dibenzo(a,h)anthracene	(1st)
U064—1,2:7,8 Dibenzopyrene	(1st)
U094—7,12-Dimethyl benz[a]anthracene	(2nd)
U120—Fluoranthene	(3rd)
U137—Indeno(1,2,3-c,d)pyrene	(1st)
U157—3-Methylcholanthrene	(1st)
U165—Naphthalene	(2nd)
U220—Toluene (methyl benzene)	(1st)
U239—Xylenes (dimethyl benzenes)	(2nd)

TABLE 8.—OXYGENATED HYDROCARBON WASTES

U001—Acetaldehyde	(3rd)
U002—Acetone	(2nd)

TABLE 8.—OXYGENATED HYDROCARBON WASTES—Continued

U004—Acetophenone	(3rd)
U031—n-Butanol	(1st)
U051—Creosote	(1st)
U052—Cresols	(3rd)
U057—Cyclohexanone	(2nd)
U085—1,2:3,4-Diepoxybutane	(3rd)
U101—2,4-Dimethylphenol	(2nd)
U108—1,4-Dioxane	(1st)
U112—Ethyl acetate	(3rd)
U117—Ethyl ether	(3rd)
U122—Formaldehyde	(1st)
U123—Formic acid	(3rd)
U124—Furan	(1st)
U125—Furfural	(3rd)
U126—Glycidaldehyde	(3rd)
U140—Isobutanol	(2nd)
U147—Maleic anhydride	(2nd)
U154—Methanol	(1st)
U159—Methyl ethyl ketone	(1st)
U160—Methyl ethyl ketone peroxide	(3rd)
U161—Methyl isobutyl ketone	(2nd)
U166—1,4-Naphthoquinone	(3rd)
U182—Paraldehyde	(3rd)
U188—Phenol	(1st)
U197—p-Benzoquinone	(3rd)
U201—Resourcinol	(3rd)
U213—Tetrahydrofuran	(2nd)

d. Organo-Nitrogen and Organo-Sulfur Treatability Groups. This group of wastes includes the nonhalogenated pesticides, nitro-organics, amines, nitriles and other organics, and the organo-sulfur wastes. The Agency is currently investigating rotary kiln incineration as treatment for these wastes. The Agency is concerned, however, with nitrogen and sulfur emissions generated from the incineration of these wastes.

One significant problem with setting standards for the pesticide wastes is that EPA does not have an analytical method that is approved by the Office of Solid Waste. The Agency recognizes that these compounds do exist and that there may be methods that may be used for the concentrated chemicals to verify purity and determine product specifications. However, there are often no analytical procedures for the measurement of trace quantities of these chemicals either in environmental samples or in residues from treatment. The organo-sulfur and organo-nitrogen wastes are not easily analyzed by gas chromatographic (GC) methods, because the compounds are polar, highly branched, and have high molecular weights. They tend to stick on most columns, although special columns may be suitable. They may also thermally decompose in the GC. This may necessitate specifying a method of treatment rather than determining numerical standards for these wastes. These wastes are grouped here to solicit comment and data on their generation and treatment.

TABLE 9.—NONHALOGENATED PESTICIDE WASTES

P001—Warfarin (>0.3%)	(1st)
P018—Brucine	(1st)
P020—Dinoseb	(1st)
P045—Thiofanox	(3rd)
P066—Methomyl	(2nd)
P070—Aldicarb	(1st)
P072—1-Naphthyl-2-thiourea (Bantu)	(2nd)
P088—Endothall	(3rd)
U011—Amitrole	(2nd)
U014—Auramine	(2nd)
UI14—Ethylene bis-dithiocarbamic acid	(2nd)
U244—Thiram	(2nd)
U248—Warfarin (<0.3%)	(1st)

TABLE 10.—NITRO-ORGANICS

P034—2-Cyclohexyl-4,6-dinitrophenol	(3rd)
P047—4,6-Dinitro-o-cresol and salts	(3rd)
P048—2,4-Dinitrophenol	(1st)
P077—p-Nitroaniline	(3rd)
U105—2,4-Dinitrotoluene	(1st)
U106—2,6-Dinitrotoluene	(2nd)
U169—Nitrobenzene	(2nd)
U170—4-Nitrophenol	(2nd)
U171—2-Nitropropane	(1st)
U181—5-Nitro-o-toluidine	(3rd)
U234—sym-Trinitrobenzene	(3rd)

TABLE 11.—AMINES

P046—a,a-Dimethylphenethylamine	(3rd)
P082—N-Nitrosodimethylamine	(1st)
P084—N-Nitrosomethylvinylamine	(1st)
U012—Aniline	(1st)
U021—Benzidine	(2nd)
U091—3,3'-Διμετηοχυβενζιδινε	(3rd)
U092—Dimethyl amine	(2nd)
U093—p-Di,methylaminoazobenzene	(2nd)
U095—3,3'-Διμετηυλβενζιδινε	(2nd)
U110—Dipropylamine	(2nd)
U111—Di-n-propylnitrosoamine	(2nd)
U167—1-Naphthylamine	(3rd)
U168—2-Naphthylamine	(2nd)
U172—N-Nitroso-di-n-butylamine	(2nd)
U173—N-Nitroso-diethanolamine	(2nd)
U174—N-Nitroso-diethylamine	(2nd)
U179—N-Nitrosopiperidine	(2nd)
U180—N-Nitrosopyrrolidine	(1st)
U191—2-Picoline	(3rd)
U194—n-Propylamine	(3rd)
U196—Pyridine	(2nd)

TABLE 12.—NITRILES AND OTHER ORGANO-NITROGENS

P031—Cyanogen	(3rd)
P033—Cyanogen chloride	(3rd)
P069—Methyllactonitrile	(1st)
U246—Cyanogen bromide	(3rd)
P064—Isocyanic acid, methyl ester	(3rd)
P101—Propanenitrile/ethyl cyanide	(3rd)
U003—Acetonitrile	(2nd)
U148—Maleic hydrazide	(3rd)
U149—Malonitrile	(2nd)
U176—N-Nitroso-N-ethylurea	(2nd)
U177—N-Nitroso-N-methylurea	(1st)

TABLE 12.—NITRILES AND OTHER ORGANO-NITROGENS—Continued

U178—N-Nitroso-N-methylurethane	(2nd)
U236—Trypan blue	(3rd)
U238—Ethyl carbamate	(1st)

TABLE 13.—ORGANOSULFUR WASTES

P002—1-Acetyl 2-thiourea	(2nd)
P014—Benzene thiol (Thiophenol)	(2nd)
P022—carbon disulfide	(3rd)
P049—2,4-Dithiobiuret	(2nd)
P093—N-Phenylthiourea	(3rd)
P116—Thiosemicarbazide	(3rd)
U116—Ethylene thiourea	(2nd)
U119—Ethyl methane sulfonate	(2nd)
U193—1,3-Propane sultone	(2nd)
U218—Thioacetamide	(2nd)
U219—Thiourea	(1st)

e. Wastes of a Pharmaceutical Nature. Information strongly suggests that these wastes are not land disposed. The treatment standard of "No Land Disposal Based on No Generation" appears to be the best alternative for these wastes. Some of these wastes are experimental drugs which were never produced in volume. Others have pesticidal uses. They are grouped as "pharmaceutical in nature" in order to solicit specific comments from the pharmaceutical industry regarding standards for these wastes.

TABLE 14

P007—Muscimol (5-Aminoethyl 3-isoxazo-lol).	(2nd)
P008—4-Aminopyridine	(2nd)
P042—Epinephrine	(3rd)
P075—Nicotine and salts	(3rd)
P108—Strychnine and salts	(1st)
U010—Mitomycin C	(1st)
U015—Azaserine	(2nd)
U035—Chlorambucil	(2nd)
U059—Daunomycin	(2nd)
U089—Diethyl stilbestrol	(1st)
U090—Dihydrosafrole	(3rd)
U141—Isosafrole	(3rd)
U143—Lasiocarpine	(2nd)
U150—Melphalan	(2nd)
U155—Methapyrilene	(1st)
U163—N-Methyl N-nitro N-nitroguanidine	(2nd)
U164—Methylthiouracil	(2nd)
U187—Phenacetin	(3rd)
U200—Reserpine	(1st)
U202—Saccharin and salts	(3rd)
U203—Safrole	(2nd)
U206—Streptozotocin	(2nd)
U237—Uracil mustard	(1st)

f. Reactive Treatability Groups. These wastes are either highly reactive or explosive, or they are polymers, which also tend to be highly reactive. A good

example of reactive/explosive wastes under this group is P081 (nitroglycerin). EPA intends to propose a testing strategy for these wastes as a comprehensive strategy for all wastes that are reactive. These wastes pose a significant risk during handling due to their reactivity. This is reflected by the fact that there are no standard EPA methods for testing for reactivity. Because of the difficulties in handling and analyzing these wastes, the Agency may only propose a testing strategy with the Third Third and solicit data and comment. Specific discussion of the proposed strategy can be found in the section on Characteristic Wastes under D003 Reactive Wastes. Removing of the property of reactivity (deactivation) seems to be an applicable treatment for these wastes. Another option for the treatment of these wastes is incineration in a rotary kiln. The Agency believes that these wastes can be effectively treated by deactivation; however additional data is necessary to complete a full characterization of these wastes in terms of generation, waste characteristics, and current treatment and disposal practices.

TABLE 15.—POLYMERIC WASTES

P003—Acrolein	(2nd)
P005—Allyl alcohol	(1st)
P054—Ethyleneimine (Aziridine)	(2nd)
P067—2-Methylaziridine	(2nd)
P102—Propargyl alcohol	(1st)
U007—Acrylamide	(1st)
U008—Acrylic acid	(2nd)
U009—Acrylonitrile	(1st)
U053—Crotonaldehyde	(1st)
U113—Ethyl acrylate	(3rd)
U118—Ethyl methacrylate	(3rd)
U152—Methacrylonitrile	(3rd)
U162—Methyl methacrylate	(2nd)
U186—1,3-Pentadiene	(3rd)
U221—Toluenediamine	(1st)
U223—Toluene diisocyanate	(1st)

TABLE 16.—EXPLOSIVE OR HIGHLY REACTIVE WASTES

P006—Aluminum phosphide	(3rd)
P009—Ammonium picrate	(3rd)
P015—Beryllium dust	(1st)
P068—Methyl hydrazine	(1st)
P073—Nickel carbonyl	(3rd)
P081—Nitroglycerin	(1st)
P087—Osmium tetroxide	(1st)
P105—Sodium azide	(1st)
P107—Strontium sulfide	(2nd)
P112—Tetranitromethane	(2nd)
P122—Zinc phosphide (>10%)	(1st)
U023—Benzotrichloride	(2nd)
U086—N,N-Diethylhydrazine	(1st)
U096—a,a-Dimethyl benzyl hydroperoxide	(3rd)
U098—1,1-Dimethylhydrazine	(2nd)
U099—1,2-Dimethylhydrazine	(2nd)
U103—Dimethyl sulfate	(1st)
U109—1,2-Diphenylhydrazine	(2nd)
U133—Hydrazine	(1st)
U189—Phosphorus sulfide	(2nd)
U249—Zinc phosphide (<10%)	(1st)

g. *Gaseous Waste Treatability Group.* While many of these gases are highly toxic, it is unlikely that they will exist as wastes which require land disposal. The wastes listed below are typically found as gaseous materials when existing at high concentrations. Since it is difficult to "spill" a gas on soil or in water, it is unlikely that these wastes could exist as spill residues. While these compounds may exist as aqueous or organic solutions, the solutions may not be considered the listed product. The original listing specifically excluded chemical products that simply contained U or P constituents. However, EPA is concerned about the possibility that full containers of these wastes may have to be disposed of in a cleanup situation. EPA solicits comments from anyone who feels they may be land disposing these wastes or may have to do so in the future.

Information suggests that the majority of these waste codes are not typically land disposed and may not even be generated. The treatment standard of "No Land Disposal Based on No Generation" appears to be the best alternative for these wastes. The Agency has not yet identified any treatment technology for these wastes. They are grouped as "gases" in order to solicit comments specific to gases.

Numerical standards for these wastes would be complicated by the fact that these compounds are gases. While some analytical techniques do exist, the fact that they are gases complicates the analysis of treatment residuals. The sampling and analysis procedures for these constituents would have to minimize potential losses.

TABLE 17.—GASEOUS TREATABILITY GROUP

P056—Fluorine	(3rd)
P076—Nitric oxide	(3rd)
P078—Nitrogen dioxide	(3rd)
P095—Phosgene	(3rd)
P096—Phosphine	(3rd)
U029—Methyl bromide	(1st)
U033—Carbonyl fluoride	(3rd)
U043—Vinyl chloride	(1st)
U045—Chloromethane	(3rd)
U075—Dichlorodifluoromethane	(3rd)
U115—Ethylene oxide	(1st)
U121—Fluorotrichloromethane	(3rd)
U134—Hydrofluoric acid	(1st)
U135—Hydrogen sulfide	(2nd)
U153—Methanethiol	(3rd)

h. Metal Waste Treatability Group. This treatability group includes wastes containing metallic compounds. These compounds include metallic salts, organometallics, and bimetallic compounds.

Analytical methods generally measure only the toxic metal, and do not determine which compound the metal is in. For example, given a mixture of chromium nitrate and chromium sulfate, the method will measure chromium but not determine whether it is in the sulfate or nitrate form. Therefore, the Agency cannot promulgate treatment standards for the specific compound listed. The Agency intends to propose treatment standards as concentrations of the specific metal in the waste, either as a total constituent analysis or as concentration in the waste extract. The Agency believes that by regulating the metal, the hazards associated with these compounds will be controlled. For example, the Agency believes that by regulating total chromium in U032, calcium chromate, the hazards associated with that waste will be regulated. Note that in the case of P114, Thallium Selenite, treatment standards for both total thallium and total selenium would be necessary for regulating its concentration. There will be specific codes which require other considerations, such as P065, mercury fulminate, which also exhibits the characteristic of reactivity. These issues will be dealt with on a code specific basis. The Agency requests comment on the appropriateness of regulating only the toxic metal constituents in these wastes.

The Agency has several regulatory options for these wastes. Performance data is available from treatment of various F and K wastes, which contained these metals. The Agency intends to investigate the appropriateness of transferring this performance data to these wastes. Another option for these U & P wastes would be to determine the applicability of the characteristic levels of the "D wastes" as a performance standard.

While characterization data on the U & P forms of these wastes is limited, performance data from other wastes containing similar compounds and having similar waste characteristics which affect performance may be transferred in order to set performance standards.

Another problem is that many of these compounds will dissociate upon contact with water. This dissociation further complicates the ability to identify the specific compound listed. In cases where the compound dissociates in water, quantitative analysis for the metal constituent is believed to be an effective measure of the concentration of the compound.

With regard to specific metals; the Agency already possesses substantial data on the treatment of chromium in wastes. For U032, calcium chromate, a

chromium standard would regulate the compound by assuring a certain concentration in the waste and/or leachate.

The behavior of mercury also causes treatment performance obstacles. First, mercury is a liquid at room temperature with appreciable vapor pressure. The Agency has performance data on stabilization techniques which imply that only low levels of mercury (<100 ppm) can be reduced in mobility. Since spills, off-spec materials, and container residues are expected to contain higher levels than this, it cannot be expected that these materials will be effectively immobilized by stabilization techniques.

TABLE 18.—METAL WASTES

P010—Arsenic acid	(1st)
P011—Arsenic (V) oxide	(1st)
P012—Arsenic (III) oxide	(1st)
P036—Dichlorophenylarsine	(1st)
P038—Diethylarsine	(3rd)
P065—Mercury Fulminate	(3rd)
P092—Phenylmercuric acetate	(1st)
P103—Selenourea	(3rd)
P110—Tetraethyl lead	(1st)
P113—Thallic oxide	(2nd)
P114—Thallium Selenite	(2nd)
P115—Thallium (I) sulfate	(1st)
P119—Ammonium vanadate	(3rd)
P120—Vanadium pentoxide	(1st)
U032—Calcium chromate	(2nd)
U136—Cacodylic acid	(3rd)
U144—Lead acetate	(2nd)
U145—Lead phosphate	(3rd)
U146—Lead subacetate	(2nd)
U151—Mercury	(1st)
U204—Selenious acid	(3rd)
U205—Selenium disulfide	(2nd)
U214—Thallium (I) acetate	(2nd)
U215—Thallium (I) carbonate	(2nd)
U216—Thallium (I) chloride	(2nd)
U217—Thallium (I) nitrate	(2nd)

10. EPA's Approach for Developing BDAT Treatment Standards for Characteristic Wastes

This section of today's preamble presents a discussion of the approaches and options that the Agency is considering for establishing BDAT treatment standards for characteristic wastes. This discussion is intended to give advance notice to the regulated community and to provide an opportunity for it to comment on these approaches and to submit data that may help in developing such standards. At this time, the Agency is not proposing treatment standards for any of the wastes listed in this section. Please identify comments on this section with the heading "Comments on EPA's approach to remaining wastes".

The criteria for identifying a waste as a characteristic hazardous waste are defined in 40 CFR 261.21 through 261.24. These criteria identify four major groups of characteristic wastes: Ignitable (D001); Corrosive (D002); Reactive (D003); and EP Toxic (D004–D017). Within each of these groups, there are several criteria that define the particular characteristic. These individual criteria were used as the basis for identifying treatability groups (subcategories) within each major characteristic group.

The format for implementing BDAT standards for characteristic wastes may be different than that used for other wastes. This is because of a difference in the nature of hazardous waste status for these wastes. Wastes that are hazardous because they exhibit a characteristic are no longer considered hazardous if they are treated so that they no longer exhibit any of the characteristics § 261.3 (c)(1) and (d)(1). It is possible that the use of available technologies will, for many of these wastes, result in a residual that no longer exhibits any of the characteristics. In this case, the waste is no longer subject to the requirements of Subtitle C of RCRA. However, in some cases, treatment to remove one characteristic may result in a residue which has a different characteristic, and thus requires further treatment. Note that if the waste or the residual is mixed with a listed hazardous waste, it is considered to be a hazardous waste even if treated to remove all characteristics.

The Agency believes that there are three major options for evaluating potential standards for any characteristic waste code or subcategory. The first option is for EPA to propose numerical and/or "No Land Disposal" treatment standards. The second option is to propose a method or sequence of methods of treatment as BDAT. The third option is to not establish any treatment standard and thereby allow the "hard hammer" to go into effect (resulting in a ban of land disposal of the waste). Although EPA initially took the position that identified hazardous wastes (i.e., those that are hazardous exclusively by virtue of exhibiting a characteristic) are not subject to the section 3004(g)(C) hard hammer, See 51 FR 1607 n.4. (Jan. 14, 1986), EPA no longer holds this view. The reference in section 3004(g)(6)(C) appears to encompass all wastes for which EPA has an obligation to establish treatment standards under paragraph (g)(5), which includes identified hazardous wastes. In addition, the legislative history is unambiguous that Congress intended EPA to include identified wastes (i.e., those identified as of the effective date of HSWA) under the hard hammer. H.R. Conf. Rep. No. 1133, 98th Cong., 2d Sess. (1984). Selection of these options vary depending on the particular subcategory of characteristic waste within each of the four major groups. The following discussions present the various issues and possible regulatory alternatives for each subcategory.

a. *D001 Ignitable Wastes.* According to 40 CFR 261.21, there are four criteria for defining a waste as a D001 Ignitable Waste. Paraphrasing these criteria, a waste can be a D001 waste if: (1) it is a liquid with a flash point less than 140°F; or (2) it is not a liquid and is capable of causing fire through friction, absorption of moisture, or spontaneous chemical changes and, when ignited, burns vigorously and persistently; or (3) it is an ignitable compressed gas; or (4) it is an oxidizer.

EPA determined that these four criteria translated directly into four treatability groups for D001 wastes. The first treatability group is classified as the Ignitable Liquids Subcategory and refers to those D001 wastes that exhibit the properties listed in § 261.21(a)(1). The second treatability group is classified as the Ignitable Reactives Subcategory and refers to those D001 wastes that exhibit the properties listed in § 261.21(a)(2). The third treatability group is classified as the Ignitable Gases Subcategory and refers to those D001 wastes that exhibit the properties listed in § 261.21(a)(3). The fourth treatability group is classified as the Oxidizers Subcategory and refers to those D001 wastes that exhibit the properties listed in § 261.21(a)(4).

D001 wastes in the Ignitable Liquids Subcategory are primarily organic liquids. These include unlisted solvents, paint thinners, contaminated oils and various organic hydrocarbons. The majority of all D001 wastes that are generated can be identified as Ignitable Liquids. These wastes are generated by almost every industry and represent a significant proportion of all hazardous wastes. Ignitable Liquids are already banned from disposal in landfills due to existing regulations on ignitable wastes and on liquid wastes. While these wastes are not typically placed in other land disposal units, it is possible that small amounts of certain water soluble D001 wastes in this subcategory have been or are being placed in surface impoundments for the purposes of biodegradation.

The Agency believes that most D001 Ignitable Liquids are already being treated by incineration, reused as a fuel substitute (due to their high BTU content) or recovered for reuse through processes such as distillation. This

subcategory of D001 wastes has been defined as hazardous due to its low flash point. This is due directly to the chemical and physical properties of the organics in the waste. Any thermal technology such as incineration and reuse as a fuel will completely remove this characteristic of low flash point by destroying these organics, thereby rendering the waste nonignitable. Based on the fact that these techniques remove the characteristic of ignitability, EPA is anticipating proposing a treatment standard of "No Land Disposal Based On Thermal Destruction" for D001 Ignitable Liquids Subcategory. This standard would not establish thermal destruction as a mandatory process for handling D001 Ignitable Liquids, but rather it would prevent placement of these wastes in land disposal units by indicating that there are existing alternatives for management of these wastes.

The Agency specifically does not want to preclude anyone from using distillation or other recovery techniques for these wastes. At the same time, the Agency does not believe that most of these wastes are necessarily recoverable by processes such as distillation. While these options may be preferable over thermal destruction for some of these D001 wastes, the end result of "No Land Disposal" is the same. The choice between thermal destruction and recovery may then be made by the generator or treater, based on economics and on the ability of the particular recovery system to handle the waste.

It is important to point out that the residues, if any, from all of thermal destruction processes may possibly be considered other hazardous wastes. In particular, these ash residues may exhibit the characteristic of EP Toxicity for metals.

Some D001 Ignitable Liquids have been shown to contain some organic constituents that are also constituents in F001–F005 solvents. The Agency could propose to transfer the standards for these constituents from the corresponding standards for F001–F005 solvents promulgated in the November 7, 1986 Solvent Rule (51 FR 40642). However, the Agency believes that this would create an unnecessary burden on the regulated community in several ways. The majority of D001 wastes in the Ignitable Liquids Subcategory probably do not contain these constituents and those generators of D001 wastes that do not have these constituents would then be required to perform a significant amount of unnecessary testing and certification.

D001 wastes in the Ignitable Reactives Subcategory are primarily inorganic solids or wastes containing reactive materials. These include materials such as reactive alkali metals or metaloids (such as sodium and potassium), calcium carbide slags, and phosphorus. All of these are very reactive with water and will generate gases that can ignite due to heat generated from the reaction with water. Other ignitable solids in this subcategory include metals such as magnesium and aluminum that can vigorously react with the oxygen in the air. There appears to be an overlap of this D001 subcategory with certain D003 reactive wastes. However, a close examination of the definitions in § 261.21(a)(2) for ignitable wastes and § 261.23(a) (2), (3) and (6) for reactive wastes reveals the distinction. The key difference is found in the phrase "* * * when ignited, burns vigorously and persistently." for ignitable wastes. This implies that the hazard is due primarily to the ignition potential rather than the extreme reactivity. D001 Ignitable Reactives are generated on a sporadic basis and generally in low volumes. They are not typically placed in surface impoundments due to the fire danger associated with their reactivity with water.

Some of these D001 wastes, such as calcium carbide slag, are often placed in specially designed units (some may be technically classified as waste piles by the Agency) for the purposes of controlled deactivation with water. Other wastes, such as those containing reactive alkali metals (sodium) are often open detonated. The Agency believes that these D001 Ignitable Reactives are being treated in a manner that renders the waste nonignitable.

Unlike the Ignitable Liquids, all of the known treatment processes for the Ignitable Reactives may result in significant amounts of solid residues. These residues may or may not exhibit the characteristic of EP Toxicity for metals. Further, the Agency believes that development of any numerical treatment standards, based on either chemical deactivation or open detonation, would be difficult because there is no known analytical test that is designed to measure the ignitability of these reactive materials nor is there a test that distinguishes the reactive chemical from the deactivated chemical (e.g. sodium).

Based on the fact that open detonation and controlled chemical deactivation will remove the characteristic of ignitability for the D001 Ignitable Reactives. EPA is considering proposing these technologies as methods of treatments, rather than establishing a numeric standard.

Another approach that the Agency may take is to propose a "No Land Disposal Based on Deactivation" standard for these wastes. By establishing this as a treatment standard, the Agency believes that the variance procedures could be used as a method of providing a more complete evaluation of the safety hazards associated with each individual deactivation or open detonation procedure at each facility.

The Agency is soliciting comments and data on the physical and chemical characterization of these D001 Ignitable Reactives as well as on the applicability of chemical deactivation and open detonation to these wastes. Facilities with wastes in this subcategory that are not amenable to these techniques should submit data and information on the characteristics of these wastes and the technical justification for why the technologies are not amenable to their wastes.

D001 wastes in the Oxidizers Subcategory are primarily inorganic. These include wastes such as waste peroxides, perchlorates and permanganates. These wastes must meet the definition of an oxidizer according to 49 CFR 173.151. For D001 wastes in the Oxidizers Subcategory deactivation with an appropriate chemical reagent to render the waste nonignitable appears to be the primary applicable treatment option. At this time, the Agency has very limited information on the generation and characterization of D001 wastes in this subcategory. While it is possible that certain aqueous solutions of these oxidizers may be useful in the treatment of other hazardous wastes, the Agency believes that these wastes should be deactivated (or used as treatment reagents) in tanks and not in surface impoundments, due to the potential release of heat and volatile organics during the oxidation/reduction reactions. Therefore, the Agency is considering proposing a treatment standard of "No Land Disposal Based on Deactivation" for D001 wastes in the Oxidizers Subcategory.

D001 wastes in the Ignitable Gases Subcategory are those that meet the definition of an ignitable compressed gas according to 49 CFR 173.300. At this time, the Agency has very limited information on the generation and characterization of D001 wastes in this subcategory. The Agency suspects that while these wastes may be generated, it is unlikely that they would require placement in any type of land disposal

unit. Therefore, the Agency is seriously considering allowing the "hard hammer" provision to take effect for this subcategory.

b. *D002 Corrosive Wastes.* According to 40 CFR 261.22, there are two criteria for defining a waste as a D002 Corrosive waste. Paraphrasing these criteria, a waste can be a D002 waste if: (1) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5; or (2) it is a liquid and corrodes steel at a specified rate and temperature.

EPA determined that these criteria translated into three treatability groups for D002 wastes. The first two treatability groups are classified as the Acid Subcategory and the Alkaline Subcategory and refer to those D002 wastes that exhibit the properties listed in § 261.22(a)(1). The two subcategories are distinguishable by the listed pH specifications and the obvious difference in neutralization reagent requirements. The Acid Subcategory is defined as those with a pH of less than or equal to 2 and the Alkaline Subcategory is defined as those with a pH of greater than or equal to 12.5. Also by definition, D002 wastes in the Acid Subcategory and Alkaline Subcategory only include wastes which are considered to be "aqueous". This is due to the fact that standard pH measurement can only be performed in the presence of significant amounts of water (i.e., pH is the measure of the concentration of acidic hydronium ions in water). The third treatability group is classified as the Other Corrosives Subcategory and is defined as those D002 wastes that exhibit the corrosivity to steel as listed in § 261.22(a)(2). These often are nonaqueous corrosive wastes such as certain organic liquids.

D002 wastes in the Acid Subcategory typically include concentrated spent acids, acidic wastewaters, and spent acid strippers and cleaners. Similarly, those wastes in the Alkaline Subcategory typically include concentrated spent bases, alkaline wastewaters, and spent alkaline strippers and cleaners. The majority of all D002 wastes that are generated are in the Acid Subcategory. However, a good proportion of D002 wastes generated are in the Alkaline Subcategory (particularly the strippers and cleaners). Wastes from both of these subcategories are generated by almost every industry and represent a significant proportion of all hazardous wastes. Wastes in the Other Corrosives Subcategory are generated on a sporadic basis and generally in low volumes. The Agency suspects that these wastes are often identified as corrosive without performing the specified testing with steel (i.e., the corrosivity of the waste may be assumed due the presence of known corrosive constituents). This may also be due, in part, to the high cost of testing and to the difficulties in identifying laboratories that are experienced in the steel corrosion testing.

The Agency believes that most D002 wastes in both the Acid and Alkaline Subcategories are already being treated by neutralization. These subcategories have been defined as hazardous due to their extremes in pH. Any neutralization technology will completely remove this characteristic of pH; thereby rendering the waste noncorrosive. Some facilities generate waste streams which fluctuate from the Acid Subcategory to the Alkaline Subcategory depending upon what process they use on a given day. However, the Agency believes that these facilities can utilize the fluctuations in pH as a means of performing on-site neutralization.

Based on the fact that these techniques remove the characteristic of corrosivity, EPA is anticipating proposing a treatment standard of "No Land Disposal Based on Neutralization" for both of these subcategories of D002 wastes.

Under the California List restrictions, the Agency has already promulgated regulations for liquid wastes having a pH of less than or equal to 2.0, by codifying the statutory restriction § 268.32. Therefore, some commenters may question the need for establishing a standard. However, these restrictions only referred to these wastes as "Corrosive wastes" without specifically identifying them as D002 wastes and the statutory restriction did not specify neutralization as a required treatment standard. The Agency is considering clarifying this by specifically proposing the "No Land Disposal Based on Neutralization" for the D002 Acid Subcategory. In addition, there were no restrictions established for D002 Alkaline Subcategory and the Agency has some concerns that there may be issues raised by industry that this standard may not be applicable to all D002 wastes in the Alkaline Subcategory. By identifying these as two different subcategories, it allows for potential differences in the development of standards due to potential issues that have yet to be identified.

It is important to point out that the residues from all neutralization processes may possibly be considered other hazardous wastes. In particular, the neutralization sludge residues may exhibit the characteristic of EP Toxicity for metals.

Neutralization is a preferred option over simple dilution. While dilution, which is currently allowed as a means of eliminating a hazardous waste characteristic, it often requires copious quantities of water or wastewaters. In addition, "dilution" of a RCRA hazardous corrosive waste to a neutral pH (i.e., as defined using a pH between 6.0 and 8.5) is currently not required. In considering the treatment standard for D002 wastes in these two subcategories, the Agency considered the possibility of establishing a standard of neutrality for these wastes (i.e., pH 6.0 to 8.5). However, previous RCRA regulations specifically state that dilution is acceptable for corrosive characteristic wastes and that elementary neutralization can be performed without certain RCRA permitting procedures. Thus, EPA believes that it cannot establish a numerical pH standard for D002 wastes based on neutralization, but instead, can only require removal of the corrosive characteristic which, in the case of the Acid and Alkaline Subcategories, means adjusting the pH to between 2.0 and 12.5.

As an alternative to this standard for both of these subcategories, the Agency is considering the simple proposal of neutralization as a method of treatment. However, by establishing the standard of "No Land Disposal Based on Neutralization", the Agency believes that a variance from this standard could be considered for D002 wastes which for some reason or another could not be effectively neutralized. This may occur for some small quantities of corrosive materials that contained quantities of extremely toxic or otherwise hazardous chemicals that may cause an unnecessary risk during neutralization.

Recovery options for these concentrated corrosive wastes have been demonstrated for a variety of wastes. While these options may be preferred over neutralization, the end result of no land disposal is the same. The choice between neutralization and recovery may be made by the generator or a centralized treatment operation, according to the applicability and performance of a given type of acid/base recovery system.

The smallest volume of D002 wastes fall under the Other Corrosives Subcategory. The physical and chemical characteristics of this group of wastes vary greatly. Overall, the wastes may be aqueous or they may be primarily organic. In addition, there exists a large variety of corrosive chemicals that may be appearing as constituents in this type

of corrosive waste. Wastes containing these chemicals may corrode SAE 1020 steel depending on the concentration of these chemicals in the waste. Examples of chemicals that may contribute to this corrosivity include: ferric chloride, benzene sulfonyl chloride, benzotrichloride, acetyl chloride, formic acid, hydrofluoric acid, phenol, triethylamine, some catalysts, various resins, metal cleaners and etchants.

As noted above, dilution is allowed in order to remove the characteristic of corrosivity. For D002 wastes in the Other Corrosives Subcategory, deactivation by dilution appears to be an applicable treatment option. Other applicable treatment options include deactivation of the corrosive constituents of the waste with an appropriate chemical reagent to render the constituent noncorrosive. Incineration of D002 wastes that contain high concentrations of corrosive organics is a common practice. However, due to the great variety of corrosive organics that exist, the Agency does not believe that it should establish chemical specific standards based on incineration for these D002 wastes. Removal and recovery of either organic or inorganic corrosive constituents may also be applicable technologies which could render these wastes noncorrosive. Recovery could involve extraction of the corrosive constituents, until the waste itself was no longer considered corrosive (to steel).

Based on this information, EPA presently intends to propose a treatment standard of "No Land Disposal Based on Deactivation" for D002 wastes in the Other Corrosives Subcategory. By establishing this standard, the Agency believes that a variance from it could then be considered for D002 wastes which for some reason could not be effectively deactivated. Dilution of these wastes could be considered a viable deactivation procedure provided no other technique could be identified.

EPA is currently conducting laboratory analysis of a waste which exhibits the characteristic of corrosivity that falls in the Other Corrosives Subcategory. This waste is a spent catalyst which contains a high level of ferric chloride suspended in a chlorinated organic phase. The Agency is conducting tests to chemically deactivate the waste through dilution to the point where it no longer corrodes steel. The volume increase resulting from this deactivation by dilution will be assessed prior to proposal of any treatment standards.

The Agency is soliciting comments and data on the physical and chemical characterization of all three subcategories of DO02 wastes as well as on the applicability of dilution, chemical deactivation, and recovery to these wastes. Facilities with wastes in these subcategories which are not amenable to neutralization or deactivation techniques should submit data and information on the characteristics of these wastes and the technical justification for why they are not amenable to neutralization or deactivation.

c. D003 Reactive Wastes. According to 40 CFR 261.23, there are eight criteria for defining a waste as a D003 Reactive waste. Paraphrasing these criteria, a waste can be a D003 waste if: (1) it is unstable and readily undergoes violent changes without detonating; or (2) it reacts violently with water; or (3) it forms potentially explosive mixtures with water; or (4) when mixed with water, it generates toxic gases; or (5) it is a cyanide or sulfide bearing waste which under certain conditions can generate toxic gases; or (6) it is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement; or (7) it is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure; or (8) it is a forbidden explosive, a Class A explosive, or a Class B explosive.

EPA determined that these eight criteria translated directly into five treatability groups for D003 wastes. The first treatability group is classified as the Reactive Cyanides Subcategory and refers to those D003 wastes that exhibit the properties listed in §§ 261.23(a)(5) for cyanide. The second treatability group is classified as the Explosives Subcategory and refers to those D003 wastes that exhibit the properties listed in §§ 261.23(a)(6) through 261.23(a)(8). The third treatability group is classified as the Water Reactive Subcategory and refers to those D003 wastes that exhibit the properties listed in §§ 261.23(a)(2) through 262.23(a)(4). The fourth treatability group is classified as the Reactive Sulfides Subcategory and refers to those DO03 wastes that exhibit the properties listed in § 261.23(a)(5) for sulfide. The fifth treatability group is classified as the Other Reactives Subcategory and refers to those D003 wastes that exhibit the properties listed in § 261.23(a)(1).

D003 wastes in the Reactive Cyanides Subcategory are by definition those cyanide bearing wastes that generate toxic gases (assumed to be HCN) when exposed to pH conditions between 2 and 12.5 in a sufficient quantity to present a danger to human health and the environment. These D003 wastes typically have been identified as being generated by the electroplating and metal finishing industries and include mixed cyanide salts, cyanide solutions and cyanide bearing sludges. The majority of the quantity of all D003 wastes that are generated can be identified as belonging to the Reactive Cyanides Subcategory.

Reactive cyanide wastes are already restricted from disposal in landfills due to existing regulations on reactive wastes. Under the California List restrictions, the statute already prohibits liquid wastes having a free cyanide concentrations in excess of 1,000 mg/kg (ppm), from being land disposed, as codified in $268.31. However, these restrictions only referred to these wastes as "Cyanide wastes" without specifically identifying them as D003 wastes or any of the other wastes listed for containing cyanides. The statutory restriction did not specify any treatment technology nor did it establish the 1,000 mg/kg as a "treatment standard". While these reactive cyanide wastes are not typically placed in most types of land disposal units, it is possible that some have been or are being placed in surface impoundments.

The Agency believes that most D003 Reactive Cyanides are already being treated by alkaline chlorination or electro-oxidation. This subcategory of D003 wastes has been defined as hazardous due to its reactive level of cyanides. This is due directly to the high concentrations of the cyanides in the waste. Any oxidation/reduction technology such as alkaline chlorination or electro-oxidation is believed to be able to lower the concentration of cyanide so that the waste would probably not contain reactive levels of cyanides, thereby removing the hazardous characteristic. One of the options that EPA is considering for establishing treatment standards for wastes in the D003 Reactive Cyanides Subcategory is the direct transfer of numerical treatment standards for total and amenable cyanides from cyanide wastes from electroplating, heat treating, or acrylonitrile production (See also, section III.A.8.a. of today's preamble).

D003 wastes in the Explosives Subcategory are by definition those wastes that are capable of detonation or explosive reaction under various conditions or are forbidden Class A, or Class B explosives (according to 49 CFR 173.52, .53, and .88 respectively). These typically have been identified as being generated by the explosives industry and the U.S. Department of Defense. While these wastes are not as frequently generated as the Reactive

Cyanides, they are generated more often than all other reactive subcategories. Explosives are already restricted from disposal in landfills due to existing regulations on reactive wastes. While these explosive wastes are not typically placed in most types of land disposal units, it used to be a very common practice to open detonate these wastes. In fact, the Agency believes that most D003 wastes that are generated in the Explosives Subcategory are currently treated by either open detonation or incineration in specially designed units. By simple deduction this process would be expected to remove the explosive characteristic of the D003 waste.

Incineration of D003 wastes in the Explosives Subcategory also appears to be an applicable technology. However, this requires incineration units that are specially designed and fitted with certain explosion-proof equipment. These type of units are not typically found at commercial incineration facilities. The Agency is aware that these types of units are currently used for many of the Department of Defense explosive wastes and that there appears to be a trend to decrease the reliance on open detonation for these wastes. However, at this time, the Agency is only in the initial investigation of these issues for these explosive wastes (with respect to the development of treatment standards for the land disposal restrictions program). While incineration appears to be a feasible option, the Agency is currently considering chemical deactivation and open detonation for the development of a treatment standard for these wastes. The Agency notes that it is unlikely that the Agency would preclude incineration in these specialized units by developing a proposed standard based on either chemical deactivation or open detonation.

D003 wastes in the Water Reactive Subcategory can be either organic or inorganic in nature. All of these are either very reactive with water or can generate toxic or explosive gases with water. While one might anticipate that an apparent applicable treatment technology for these wastes would be to react the wastes with water, these reactions are often very vigorous and extremely difficult to control. The most common treatment for these wastes is actually open detonation. It is theorized that the reactive organic constituents are destroyed by the explosion and that the reactive inorganic constituents form less hazardous oxides or react with other chemicals in the explosion (such as moisture from the air). Wastes in the Water Reactive Subcategory are generated on a sporadic basis and generally in low volumes. These wastes are not typically placed in land disposal units and are certainly not typically placed in surface impoundments due to their violent reactivity with water.

An approach that the Agency is considering is to propose a "No Land Disposal Based on Deactivation" standard for the D003 reactive wastes in Explosives Subcategory and Water Reactives Subcategory. By establishing this as a treatment standard, the Agency believes that the variance procedures could be used as a method of providing a more complete evaluation of the safety hazards associated with each individual deactivation or open detonation procedure at each facility. This may be the preferred approach, in that; (1) It appears to provide more assurance of the protection of human health and the environment at each individual site by providing a more extensive technical evaluation by regulatory personnel; (2) it allows the wastes to be treated by any treatment technology that may be developed (such as specially designed incineration units); and (3) it also bans most forms of land disposal.

D003 wastes in the Reactive Sulfides Subcategory are by definition those sulfide bearing wastes that generate toxic gases (assumed to be H_2S) when exposed to pH conditions between 2 and 12.5 in a sufficient quantity to present a danger to human health and the environment. At this time, the Agency is only in the initial investigation of these issues for these reactive wastes (with respect to the development of treatment standards for the land disposal restrictions program). Treatment for sulfide wastes might be to chemically convert the reactive sulfides to inert sulfur, to insoluble metallic salts, or to soluble sulfates that can be removed or recovered. The Agency believes that some of these wastes may also be contaminated with organic sulfides known as mercaptans. These malodorous chemicals are believed to complicate the treatment of these reactive sulfide wastes. It is believed that these type of wastes have been particular treatment problems for the petroleum refining industry. The Agency is hereby soliciting waste characterization and treatment data that could be used to aid in the potential development of treatment standards for these wastes. Currently, the Agency has not approved a standard analytical method for testing either sulfides or reactive sulfides in hazardous wastes or in treatment residues. It is unlikely, therefore, that the Agency will be able to propose a numerical treatment standard for D003 wastes in this subcategory.

D003 wastes in the Other Reactives Subcategory can be either organic or inorganic in nature. Information suggests that these wastes are infrequently generated and probably in small quantities. These wastes do not appear to be placed in land disposal units. At this time, the Agency is only in the initial stages of investigation of these issues for these reactive wastes (with respect to the development of treatment standards for the land disposal restrictions program). In general, the Agency believes that these unstable wastes can either be incinerated in special units or open detonated. The Agency suspects that while these wastes may be generated, it is unlikely that they would require placement in any type of land disposal unit. Therefore, the Agency is seriously considering allowing the "hard hammer" provisions to take effect for this subcategory.

All of the known treatment processes for all of the five subcategories of D003 Reactive Wastes can result in significant amounts of solid residues. These residues may or may not exhibit the characteristic of EP Toxicity for metals. Instead of trying to establish metal standards for these residues, the Agency prefers to regulate land disposal of them only if they appear to be EP Toxic wastes. Thus, the Agency is currently not considering proposing standards for metals in the residues from the deactivation of D003 wastes.

Further, for all subcategories of D003 wastes except the Reactive Cyanides, the Agency believes that development of any numerical treatment standards, based on any of the appropriate deactivation techniques, would be difficult to develop because there is no known analytical test that is designed to measure the reactivity of these wastes nor is there a test that distinguishes the reactive chemical from the deactivated chemical (e.g. sodium).

The Agency is soliciting comments and data on the physical and chemical characterization of all five D003 subcategories as well as on the applicability of chemical deactivation, incineration, and open detonation to these wastes. Facilities with wastes in these subcategories that are not amenable to these techniques should submit data and information on the characteristics of these wastes and the technical justification for why the technologies are not amenable to their wastes.

d. EP Toxic Wastes. Paraphrasing the criteria in 40 CFR 261.24, a waste is

considered a characteristic EP Toxic waste provided that, the extract (using an approved extraction procedure referred to as the EP) from a representative sample of the waste contains any of the contaminants listed in § 261.24 Table I at a concentration equal to or greater than the respective value given in that table. A waste can be identified as an EP Toxic characteristic waste based on the concentration of one of eight different metals or six chlorinated pesticides.

The Agency examined these fourteen chemical constituents for similarities in treatability and determined that while there are two obvious major treatability groups of metals and of pesticides, the definition of separate treatability subcategories within these major groups could not be performed at this time. However, the Agency has determined that there are certain similarities in chemical and physical nature of the various metals and pesticides that appear to be the potential basis for future definition of treatability subcategories. This section of the preamble discusses these similarities and outlines only a few of the possible alternatives for developing treatment standards for these EP Toxic wastes.

1. Arsenic, Chromium and Selenium (D004, D007 and D010). While arsenic (D004), chromium (D007) and selenium (D010) all exhibit positive valence states, they show little tendency to exist as solitary cationic species in aqueous solutions. They typically exist in aqueous conditions as oxo-anions [i.e., arsenic appears as arsenite (AsO_2^-) and arsenate (AsO_4^{-3}), while chromium appears as chromate (CrO_4^{-2}) and dichromate ($Cr_2O_7^{-2}$)]. This behavior differs from that of other metals, in that other metals usually exhibit strong cationic behavior in aqueous conditions. Thus, selection and performance of various treatment technologies is often different for arsenic, selenium and chromium bearing wastes compared to wastes containing only other metal constituents.

Applicable treatment technologies that the Agency is considering for arsenic, selenium, and chromium wastes include: (1) Recycling/recovery technologies such as high temperature metals recycling, freeze concentration, and ion exchange; (2) chemical reduction (such as the conversion of hexavalent chromium to the trivalent state) using reagents such as sulfur dioxide, sodium bisulfite, sodium metabisulfite, sodium hydrosulfite, and/or ferrous sulfate; (3) chemical oxidation using reagents such as hypochlorite, chlorine, hydrogen peroxide, and/or potassium permanganate; (4) metals precipitation using a combination of lime and sulfide; and (5) specialized stabilization such as vitrification/molten glass stabilization or stabilization with additives such as red clays, silicates, and proprietary binders.

The Agency believes that recovery of arsenic, selenium, and chromium may be feasible for some wastes provided the metal has been first chemically converted to an easily recoverable form. Information regarding problems with recovery of arsenic from wastes is described in section III.A.11.a. of this preamble (i.e., a discussion of waste codes K031, K084, K101, and K102). Information suggests that recovery of elemental selenium out of certain types of scrap material is currently practiced in the United States, and it may be possible to extrapolate this technology to other forms of selenium wastes. Ion exchange has been reported to be effective for the recovery of chromium from wastewaters, and for purification of some chromic acid solutions. It has been reported that anionic exchange has been employed for the removal chromate and dichromate from some wastes. Evaporative recovery as well as freeze recovery are two concentration processes that have been suggested for recovery of chromium from rinsewaters and some other wastewaters. The Agency is requesting comments and data as to the applicability of these and any other recovery technologies for wastes containing EP Toxic concentrations of arsenic, chromium and/or selenium.

More extensive treatment trains appear to be necessary to treat some complex wastes such as wood preserving wastes and other wastes that are EP Toxic for both arsenic and chromium. Besides the reduction step for the hexavalent chromium, an additional oxidation step with reagents such as hydrogen peroxide or hypochlorite, may be necessary for the arsenic. The presence of organics and organo-metallic complexes would further complicate the treatment process. These may have to be oxidized or otherwise removed prior to conversion of the metals to their proper valence state for further metal treatment such as precipitation.

Precipitation of arsenic from wastewaters identified as D004 appears to be effective under certain alkaline conditions. Information regarding applicability and performance of lime versus sulfide precipitation for wastewaters containing arsenic is described in significantly greater detail in section III.A.11.a. of this preamble. In general, while typical lime and/or sulfide precipitation procedures (without the proper pretreatment steps) may be effective for removal of all three of these metals from wastewaters, the chemical state of these metals in the resultant treatment sludge may not be correct to minimize the leachability of these metals during land disposal. In addition, further treatment with typical cementitious stabilization may actually increase the leachability of these metals, if they are not in the proper chemical state.

The Agency attempted cement stabilization of wastes that contain high concentrations of arsenic (K031). The resultant data indicated that the leachability of arsenic from the treated residues increased by orders of magnitude over the leachability from the untreated wastes. Typically, chemical stabilization of sludges containing metals is partly based on the ability of the alkaline cementitious reagents to chemically bind the cationic metal species. The Agency believes that the increase in leachability of arsenic after stabilization is probably due to the increased solubility of various forms of arsenic at higher pH. In addition, this increase in leachability seems to be indicating that the arsenic is not being chemically bound by the stabilization reagents. While the Agency has not fully investigated these potential problems in solidification for high concentrations of selenium, some information suggests that these complications will occur.

Several alternatives to cementitious stabilization for arsenic, chromium and selenium wastes are currently under consideration by the Agency including vitrification or molten glass stabilization, the use of red clays containing alumina as additives to the stabilization process, and the use of other noncementitious proprietary binders for stabilization. The Agency is currently planning on conducting stabilization tests for certain arsenic and chromium wastes. However at this time, it has not established which wastes or which processes will be studied. The Agency is therefore, soliciting comments and data on these stabilization techniques for arsenic, selenium and chromium and is particularly interested in data for wastes (solid or liquid) with concentrations of these metals greater than 1% (by weight) as well as data for those wastes that are known to contain organo-complexes of these metals.

2. Cadmium, Lead and Mercury (D006, D008 and D009). Applicable treatment technologies that the Agency is considering for cadmium (D006), lead

(D008), and mercury (D009) wastes include: (1) Recycling/recovery technologies such as acid leaching, high temperature metals recycling, and ion exchange; (2) chemical oxidation/reduction; (3) metals precipitation; (4) incineration of wastes high in organics; and (5) conventional and specialized stabilization processes with additives such as sulfides, silicates and proprietary binders.

The Agency currently has performance data on an acid leaching/chemical oxidation/filtration washing, as well as simple water washing and filtration, for nonwastewaters contaminated with mercury (i.e., K071 wastes). The Agency also has performance data on sulfide precipitation/filtration of mercury containing wastewaters. Currently, cementitious stabilization of mercury nonwastewaters has not been demonstrated as effective for mercury wastes. The Agency intends to analyze treatability groups for all mercury wastes to determine which portions of these performance data can be transferred to D009 nonwastewaters. For some other D009 nonwastewaters (such as wastes contaminated with liquid or elemental mercury), the Agency is considering retorting, amalgamation with zinc, and/or denuding of mercury amalgams to regenerate mercury and zinc. Along with investigating the potential transfer of existing performance data for these D009 nonwastewaters, the Agency intends to investigate chemical reduction of mercury contaminated wastewaters followed by retorting of the filtration residuals (K106). At this time, the Agency is actively pursuing possible testing of a K106 retort systems that may be applicable to other mercury wastes. The Agency solicits comment and data on the above listed treatment technologies for D009 wastes.

EPA has promulgated lead treatment standards for many listed wastes (both wastewaters and nonwastewaters). K062 is the primary source of wastewater treatment data for lead. In addition, the Agency has performance data on stabilization of F006, K061, and K062 nonwastewaters that contain various concentrations of lead. EPA has High Temperature Metal Recovery data on K061, and information indicating recovery of lead from F006, K002–K007, K069 and lead acid batteries. The data on F006 indicate that stabilization may often result in a treated waste that remains a EP Toxic waste for lead. This is particularly true, if the EP concentration is lowered for this contaminant. Thus, it appears that some (if not many) D008 wastes, when treated, will remain D008 wastes (albeit, wastes with much lower leachability). This appears to imply that the Agency should not allow the "hard hammer" provisions to take effect for D008 wastes.

Besides the wastes that can be effectively stabilized and those which are being sent to recovery facilities due to the high lead content, there appear to be several potential subcategories of EP Toxic lead wastes that may not be able to be readily treated by these technologies. Wastes which are mostly organic and contaminated with lead appear to represent a large portion of the number of D008 wastes. These include wastes from the removal of leaded paints from buildings, leaded paints and paint sludges, and analytical samples from lead testing programs. Organo-lead compounds such as tetraethyl lead (P110) may require pretreatment to break the organo-metallic bond prior to further treatment such as stabilization. Incineration or other thermal destruction may be possible for all of the organo-lead materials (including the paint wastes) provided these wastes can be thoroughly mixed with other wastes, so as to meet strict metals emissions standards for lead. The resultant ash would probably require an additional solidification step. Other inorganic nonwastewaters with concentrations of lead in the percent levels, such as lead dross, slag from secondary lead smelting, and residuals from K061 treatment, are sometimes being rejected by lead recovery facilities for various reasons. These high levels of lead and other contaminants are expected to pose significant problems with stabilization. The Agency is not aware of data in this area, and solicits any available.

EPA has performance data on stabilization of cadmium in F006 that is possibly transferable to other D006 electroplating wastes and to some D006 pigment wastes. Performance data for cadmium also exist for stabilization and high temperature metals recovery of K061 wastes. Low concentrations of cadmium appear to be effectively stabilized using conventional cementitious solidification processes. High levels of cadmium may be more amenable to recovery, although current practice shows little recovery of cadmium is currently practiced.

3. Barium and Silver (D005 and D011). The Agency does not have enough information at this time to fully characterize barium containing wastes (D005). It is believed that these wastes represent a very small volume of wastes. The Agency is investigating stabilization for these wastes. There is some data that suggest that when present as a sulfide these waste are not soluble and can be stabilized. However, barium is typically removed from wastewaters as barium sulfate. If the treatment sludge is a D005 waste and is high in barium sulfate, then conventional solidification processes may not be effective in reducing the leachability of these wastes. Cements that are designed for high sulfate content would be required. Currently, the Agency has no data for these type of wastes or for this type of solidification.

The Agency believes that silver containing wastes are not currently land disposed. These wastes, although believed to be small in volume, have a great potential for recovery/reuse because of their economic value. The Agency does not have enough data to fully characterize these wastes and is requesting comments on current treatment practices and waste generation. However, the Agency is anticipating proposing a standard of "No Land Disposal Based On Recovery" for silver containing wastes.

4. D012, D013, D014, D015, D016 and D017. The Agency believes that the majority of these wastes, when existing as untreated wastes, may contain high enough concentrations of their respective halogenated pesticide, that these wastes are already restricted from land disposal on the basis of application of the California List rule for Halogenated Organic Compounds (HOCs). Since the concentrated wastes (greater than 1% HOCs) are probably being incinerated, it is likely that the wastes really covered in this section are those wastes with concentrations of these pesticides between EP levels and 1%. Treatment technologies that the Agency has identified as applicable for treatment of these wastes are primarily incineration technologies including rotary kiln and fluidized bed. Some of these D012–D017 wastes are no longer generated because their use as a pesticide has been banned. Thus, the Agency may propose a "No Land Disposal Based on No Generation" for these wastes.

In considering the development of numerical treatment standards for these wastes, the regulated constituent for each of these wastes would be the individual pesticide for which the waste was listed. The Agency is considering to utilize a transfer of performance data for developing treatment standards from rotary kiln incineration of similar wastes. The strategy of this transfer would be similar to that that the Agency

may propose for other chlorinated pesticide wastes such as K041, K098, U129, U247, U214, P051, and P123. The potential transfer strategy is outlined in the sections of today's preamble that correspond to the above wastes. If these numerical standards prove to be lower than the corresponding EP Toxic concentration, the Agency may then consider proposing a "No Land Disposal Based on Incineration" for these wastes or may decide to propose no treatment standard and thereby, allow the "hard hammer" provisions to take effect for these wastes. However, if the standards are above the corresponding EP Toxic concentration or if no leachability data on incineration ash can be developed for correlation to the EP concentrations, then the Agency probably will propose numerical standards for the D012–D017 wastes.

11. EPA's Approach for Developing BDAT Treatment Standards for all Remaining Listed Wastes

This section of today's preamble presents a discussion of the approaches and options that the Agency is considering for establishing BDAT treatment standards for the remaining listed "F" and "K" wastes that have not been proposed to date. This includes some First Third wastes for which land disposal remains regulated under the "soft hammer" provisions and some Third Third wastes for which EPA has just begun investigating treatment options. A synopsis of the status of ongoing treatment evaluations is also included. Overall, this discussion is intended to give advance notice to the regulated community and to provide an opportunity for it to comment on these approaches and to submit data that may help in developing such standards. At this time, the Agency is not proposing treatment standards for any of the wastes listed in this section. Please identify comments on this section with the heading "Comments on EPA's approach to remaining wastes".

The Agency is specifically soliciting comments on the approach to develop treatment standards for each of the individual wastes or treatability groups. Comments and data on specific treatment technologies for specific wastes or subcategories should include a description of the generation process or processes, complete chemical and physical analyses of the wastes and treatment residuals (including all appropriate QA/QC information), as well as technical descriptions of the treatment technologies and their optimum operating conditions. Facilities planning new tests may wish to communicate with EPA before testing.

a. First Third Wastes. Treatment standards for some First Third wastes were not promulgated by the statutory deadline, August 8, 1988. As required by the statute, these wastes have become regulated under the "soft hammer" provisions outlined elsewhere in this preamble. The Agency's interpretation of the applicability of the "soft hammer" provisions can be found in 53 FR 31146 (August 17, 1988). The following discussion provides a synopsis of the status of ongoing treatment evaluations for these wastes or groups of wastes.

1. F006–F009, F019, K011–K014, and K036. Section III.A.8A of today's rule proposes numerical treatment standards for wastewater and nonwastewater forms of F007, F008, F009, F019, K011, K013, and K014 as well as numerical treatment standards for cyanides in wastewater forms of F006. In addition, section III.A.8.n. of today's rule proposes a treatment standard for Disulfoton in wastewater forms of K036. Until these standards are promulgated for these First Third wastes, land disposal of them shall remain regulated according to the "soft hammer" provisions.

2. K004, K008, K021, K022, K036, K046, K060, and K061. While treatment standards for nonwastewaters forms of wastes identified as K004, K008, K021, K022, K036, K046 (Nonexplosive Subcategory), K060, and K061 were promulgated on August 8, 1988, no standards were promulgated for the wastewater forms of these wastes, nor are there any proposed in today's rule. In general, the Agency intends to develop numerical treatment standards based on treatment data that the Agency already possesses. In some cases, treatment standards for metals and some organics may be based on data obtained by the Agency's Office of Water for the National Pollution Discharge Elimination System (NPDES) program.

The Agency believes that hexavalent chromium and lead may be present in some of these wastewaters (such as K004, K008, K022, K046 and K061). Standards for chromium, lead and other metals may be developed based on a transfer of data from the treatment of K062 (spent pickle liquor). K062 standards were based on the performance of technologies that included hexavalent chromium reduction, metals precipitation and filtration followed by dewatering.

Information also suggests that cyanides may be potentially present in wastewaters identified as K004, K008 and K060. Standards for cyanides will most likely be based on performance data from the alkaline chlorination or electro-oxidation of electroplating and heat treating wastes (F006–F012 and F019) as outlined in section III.A.8A of today's preamble. While the Agency intends to use as much existing data as possible, it is not precluding the use of data supplied by industry in response to today's proposal nor is it precluding itself from obtaining new data.

3. K017 and K073. No standards have been promulgated for either wastewater or nonwastewater forms of K017 and K073 wastes. The Agency believes that, as generated, both of these wastes are nonwastewaters that contain relatively high concentrations of chlorinated organics. While the Agency believes that the nonwastewater forms of these two wastes are most likely already regulated by the California List prohibition on Halogenated Organic Compounds (HOCs), this prohibition only established incineration and fuel substitution as a method of treating HOCs and did not establish numerical treatment standards for particular halogenated organic constituents. For the organic constituents in K017 and K073 wastes, the Agency is considering the transfer of performance data from the incineration of K019 and/or F024 nonwastewaters. These wastes also contain high concentrations of other chlorinated organic constituents. The Agency does not intend to specifically perform analytical testing of the performance of incineration on either K017 or K073 wastes.

Because of the restrictions on land disposal of HOCs, the Agency anticipates that these two wastes are currently being destroyed thermally and is hereby soliciting data generated from this combustion that may aid in the development of treatment standards for these wastes.

A treatment standard of "No Land Disposal Based on No Generation" was originally proposed for K073 wastes in the April 8, 1988 **Federal Register**. In response to the proposal, one facility provided information that indicated that K073 wastes are still being generated. Since the basis for the proposed treatment standard was then considered invalid, the Agency did not promulgate the standard. The facility also indicated that the K073 wastes that were generated were also being incinerated. At this time, the Agency has not received any analytical data on the incineration of these wastes. Since the facility appears to be the only generator of K073 wastes and has also notified the Agency that it anticipates that it will cease generation prior to May 8, 1990 (due to a change in their production process), additional options that the

Agency is considering for K073 nonwastewaters is to allow the "hard hammer" provisions to become effective or to repropose the "No Land Disposal Based on No Generation". The Agency specifically solicits comment on these approaches.

4. K031, K084, K101, and K102. The Agency has determined that K031, K084 and K101/K102 (High Arsenic Subcategory) wastes represent one treatability group. Problems with establishing BDAT and treatment standards for these First Third wastes are based on the relatively high concentrations of arsenic in these wastes and the difficulties in treatment due to the toxicity and unique chemistry of arsenic. Arsenic presents particular treatment problems due to its nonmetallic behavior and its tendency to exist in these wastes as oxo-anions (ionic complexes containing oxygen and arsenic with an overall negative charge, such as arsenite and arsenate) and as organo-arsenical complexes. Metals typically exist in wastes as soluble cationic species (single metallic ions with a positive charge).

The Agency attempted stabilization of K031 wastes using Portland cement. The resultant data indicated that the leachability of arsenic from the treated residues increased by orders of magnitude over the leachability from the untreated wastes. Typically, chemical stabilization of sludges containing metals is partly based on the ability of the alkaline cementitious reagents to chemically bind the cationic metal species. The Agency believes that the increase in leachability of arsenic after stabilization is probably due to the increased solubility of various forms of arsenic at higher pH. In addition, this increase in leachability seems to be indicating that the arsenic is not being chemically bound by the stabilization reagents.

Several alternatives to cementitious stabilization for arsenical wastes are currently under consideration by the Agency including vitrification or molten glass stabilization, the use of red clays containing alumina as additives to the stabilization process, and the use of other noncementitious proprietary binders for stabilization. The Agency is currently planning on conducting stabilization tests for certain arsenic wastes. However at this time, it has not established which wastes or which processes will be studied. The Agency is therefore, soliciting comments and data on these stabilization techniques for arsenic and is particularly interested in data for wastes (solid or liquid) with arsenic concentrations greater than 1% (by weight) as well as data for those wastes that are known to contain organo-arsenicals.

For K084, K101 and K102 nonwastewaters, incineration followed by ash stabilization was originally identified as an applicable technology due to the high organic content of these wastes. Analyses of the wastes during sampling indicated that these wastes contained concentrations of total arsenic exceeding 1% by weight. Due to concerns over safe handling and potential air emission problems, the Agency did not continue performance testing of incineration of these high arsenic wastes. Other K101 and K102 wastes containing less than 1% arsenic were safely incinerated by EPA using specialized air pollution control devices, such as electrostatic precipitators or high efficiency wet scrubbers. Based on this testing, treatment standards for K101 and K102 wastes containing less than 1% total arsenic were promulgated on August 8, 1988. The Agency believes that incineration remains a viable treatment alternative for organo-arsenical wastes and organic wastes contaminated with inorganic arsenic for wastes with total arsenic concentrations under 1%.

For K084, K101, K102 and similar organo-arsenic wastes with greater than 1% total arsenic (e.g., P036, P038, U136 and some D004 wastes), EPA is also considering other organic destruction techniques such as chemical oxidation followed by stabilization of the inorganic residues. The Agency is requesting comments as to the applicability of these technologies to organo-arsenical wastes.

In establishing wastewater treatment standards for these arsenic wastes, the Agency believes that it must consider the physical and chemical state of the arsenic in the wastewater treatment residue and not just the efficiency of removal of the arsenic from the wastewater. Wastewater treatment for most metals is typically based on precipitation with anionic species such as hydroxide, sulfide, carbonate, phosphate or sometimes sulfate. Soluble arsenic species have been reported to be removed from wastewaters by using lime (calcium hydroxide) as a precipitant. However, lime precipitation for arsenic involves precipitation as a calcium salt rather than as a hydroxide (as with most other metals).

Sulfide "precipitation" using sodium sulfide or hydrogen sulfide as reagents has also been reported to be partially effective for the treatment of wastewaters containing arsenic in the form of arsenates, but relatively ineffective for arsenites. This treatment is believed to be the result of a chemical reaction of the arsenate anions with the sulfide anions resulting in the conversion of arsenic in the arsenate form to a relatively insoluble arsenic sulfide. While removal of arsenic with lime may be utilized for wastewaters, the reaction with sulfide and subsequent conversion to arsenic sulfide should result in a precipitate that is less soluble in water than the calcium salt (Calcium arsenate is slightly soluble in water, while arsenic sulfide is practically insoluble in water). However, while arsenic sulfide is insoluble in water under acid conditions, information appears to indicate that the leachability (or solubility) of the arsenic sulfide increases under alkaline conditions. At this time, the Agency has not completed its evaluation of the environmental benefits and/or trade-offs of requiring arsenic to be removed from wastewaters as a sulfide, as a calcium salt, or using some combination of both. The increase in removal efficiency with sulfide precipitation must be balanced against the potential for increased leachability under alkaline conditions. This increased leachability is a valid concern, in that, many operators of hazardous landfills may co-dispose all "metal" wastes and typical procedures are to add excess lime to prevent migration of the other metals. One possible solution to this problem is for the Agency to establish special requirements for the disposal of arsenic wastes as a type of incompatible waste. The Agency is specifically soliciting comments and data on all of these issues for arsenic wastes.

In studying the generation of K084 wastes, the Agency obtained information that suggests that some organo-arsenical compounds can be precipitated from wastewaters by simply increasing the pH due to variation in solubilities with pH. The Agency recognizes that this procedure may be effective for removal of the organo-arsenicals and perhaps certain additional inorganic arsenic complexes from wastewater. However, since this treatment generates a nonwastewater residue (K084) that contains high organics and high arsenic, the Agency is concerned that the treatment process has created a residual for which further treatment has not yet been identified (i.e., incineration may be considered risky and stabilization may be ineffective for the organo-arsenicals). The Agency believes that one possible solution to this problem is for the facility to change the treatment process for the wastewaters by adding a chemical

oxidation step that can effectively break the organo-arsenical bonds and thereby convert the organo-arsenicals to inorganic forms that may be effectively treated by specialized stabilization processes or possibly recovered.

The Agency is also considering high temperature metals recovery of arsenic wastes as well as other recovery processes, as alternatives to land disposal. Some of the wastes contain up to 26% arsenic indicating a high potential for recovery and reuse. High temperature metals recovery would probably require air pollution control devices, such as electrostatic precipitators or high efficiency wet scrubbers, on the recovery processes. This technology can be theoretically applicable to either organic or inorganic wastes containing arsenic. One problem with this approach is that the Agency has not been able to identify an existing high temperature metals recovery facility in the United States that can technically recover arsenic and is commercially available. The Agency also considered ion exchange as a potential recovery process for arsenic contaminated wastewaters. However, typical ion exchange recovery of metals is geared to recovery of cationic metal species. The Agency has not been able to identify any specific ion exchange technology designed to recover arsenic. The Agency solicits comments and data on the feasibility and/or effectiveness of recovery of arsenic from either wastewaters or nonwastewaters.

5. *K035 and K083.* The Agency believes that K035 and K083 wastes typically contain sufficient concentrations of organics with sufficient fuel content that these wastes can be used as fuel substitutes. A treatment standard for K083 nonwastewaters was originally proposed as "No Land Disposal Based on Recycling". The data available to the Agency indicated that some K083 wastes could be burned in a boiler without generation of ash residues. One commenter to the proposed standard responded that his facility was generating a K083 waste that did generate ash residues. The Agency promulgated the proposed standard for only those K083 wastes that contained less than 0.01% ash (i.e., the typical detection limit for ash content that infers that the waste has "no ash").

To date, no additional data on the K083 wastes that contain greater than 0.01% ash, have been submitted to the Agency by the facility. If data and information on this ash is not obtained by the Agency in time for proposal with the Third Third wastes, the Agency intends to propose a treatment standard for these K083 nonwastewaters by transferring performance data from the incineration of other wastes such as K001, K022, K087 and/or K103/K104. Wastewater standards may be proposed based on an analysis of the respective scrubber waters generated from incineration of these wastes or based on a transfer of wastewater treatment data from the NPDES program.

In a similar manner, the Agency intends to propose standards for K035 wastes based on a transfer of the same data. Currently, the Agency is gathering waste characterization data on K035 wastes in order to establish the applicability of transferring performance data from these wastes. There is also a possibility that K035 wastes are no longer generated. The Agency specifically solicits comments on the approach of establishing a treatment standard for K035 nonwastewaters (as generated) of "No Land Disposal Based on No Generation".

6. *K046.* Treatment standards based on solidification for K046 wastes in the Nonreactive Subcategory were promulgated by the Agency on August 8, 1988. The Agency is currently evaluating options for the treatment of the Reactive Subcategory of K046 wastes. The reactivity of these wastes is due to the presence of chemical constituents that can be explosive in certain situations. The typical treatment process for explosive wastes is either open detonation or specialized incineration.

One of the problems with open detonation of these reactive K046 wastes is that the waste contains significant concentrations of lead. During open detonation, this lead is released to the environment and typically contaminates the ground surrounding the open detonation site. One option that has been suggested by industry, is to allow open detonation followed by solidification of the surrounding soil, depending on the leachability of the lead from the soil. The Agency believes that development of numerical treatment standards based on open detonation appears to be a difficult process due to potential problems in developing analytical requirements for the surrounding soils, such as the frequency and location for sampling.

Incineration of K046 wastes in the Reactive Subcategory may also be applicable. However, this would require incineration units that are specially designed and fitted with certain explosion proof equipment. These type of units are not typically found at commercial incineration facilities. Currently, the Agency has not identified any information on the incineration of K046 wastes. While incineration appears to be a feasible option, the Agency is currently considering the performance of chemical deactivation processes for development of a treatment standard for these wastes. The Agency notes that it is unlikely that incineration in these specialized units would be precluded from use by the establishment of a standard based on chemical deactivation.

Chemical deactivation of the explosive constituents in the K046 wastes appears to be a potentially useful step in the development of treatment standards. Chemical deactivation is essentially a controlled chemical reaction that destroys the explosive constituents through oxidation/reduction processes thereby rendering the waste nonreactive. One problem with considering this process as BDAT is that the deactivation may have to take place prior to the generation of the K046, because K046 is listed as a wastewater treatment residue. However, if these wastes can technically be generated as nonreactive (i.e., not explosive), the Agency believes that a standard for K046 wastes in the Reactive Subcategory may not even be necessary. In considering this approach, the Agency may propose a "No Land Disposal Based on Deactivation" standard for these K046 wastes thereby forcing generators to deactivate their wastewaters prior to generation of a wastewater treatment residue (i.e., a K046 waste in the Nonreactive Subcategory). By establishing the standard of "No Land Disposal Based on Deactivation" for the Reactive Subcategory, the Agency believes that a variance from this standard could then be considered for wastes that for some reason could not be effectively deactivated. As an alternative, the Agency may simply propose the existing lead standard based on solidification for K046 Nonreactive Subcategory for the K046 Reactive Subcategory.

The Agency is soliciting comments and data on the physical and chemical characterization of K046 wastes in the Reactive Subcategory as well as on the applicability of chemical deactivation to these wastes. Facilities with wastes in this subcategory that are not amenable to deactivation techniques should submit data and information on the characteristics of these wastes and the technical justification for why they are not amenable to chemical deactivation.

7. *K069.* A treatment standard of "No Land Disposal Based on Recycling" was originally proposed for all K069 wastes.

One commenter responded that his facility generates a K069 waste that was not recyclable due to the significantly lower concentrations of lead (the constituent being recovered). Information supplied on the waste characteristics and the generation procedure confirmed that there is a significant difference between these wastes and that two treatability subcategories were necessary for these wastes. The Agency identified the commenter's waste as a K069 nonwastewater in the Calcium Sulfate Subcategory and did not promulgate the proposed treatment standard for that Subcategory. However, the proposed standard was promulgated for all other K069 nonwastewaters. The Agency identified these wastes as the Non Calcium Sulfate Subcategory of K069 nonwastewaters.

To date, no other facility has been identified as generating K069 nonwastewaters in the Calcium Sulfate Subcategory and the Agency is considering developing a treatment standard based on waste characterization data supplied by this facility. While EPA has not obtained any specific treatment data on this particular waste, it intends to propose numerical treatment standards based on a transfer of solidification data for another hazardous waste known to contain hazardous constituents similar to this subcategory of K069. In a similar manner, the Agency intends to transfer treatment standards for metals for K069 wastewaters for both subcategories.

The data on generation of the K069 wastes in the Calcium Sulfate Subcategory indicated that during the generation of this waste, excess lime is added to the K069 as it is being generated. This excess lime is expected to act as a stabilizing agent, with the resulting waste exhibiting a lower leachability than would be expected from a waste which was generated without the addition of excess lime. Characterization data of this waste also indicated a high level of sulfates in the waste. Sulfates have been identified by the Agency as a waste characteristic which affects treatment performance of some solidification processes. The data which the Agency is currently considering as potentially transferable contain relatively low concentrations of sulfates. However, transferring any of the existing solidification performance data to these K069 wastes is expected to result in a treatment standard that the Agency believes may be achievable simply by the current practice of addition of excess lime during generation.

8. *K085.* Treatment standards for K085 wastes were not proposed with the First Third wastes, because difficulties arose in the planned incineration of the waste. The Agency collected waste characterization data for K085 nonwastewaters that indicated the presence of polychlorinated biphenyls (PCBs) in concentrations greater than 50 ppm. The Toxic Substances Control Act (TSCA) requires that incineration of wastes with greater than 50 ppm of PCBs be performed at a facility that is specifically permitted under TSCA for incineration of PCBs. Incineration at an approved facility could not be arranged in time for proposal of treatment standards with the First Third wastes.

Since that time, EPA has identified existing data obtained by the Agency's Office of Toxic Substances (OTS) on the incineration of transformer fluids containing PCBs at a facility that also incinerates K085 wastes. Since transformer fluids were often comprised of a blend of concentrated PCBs with a mixture of chlorobenzenes, the Agency anticipates that this data will be useful in establishing numerical treatment standards for all chlorobenzene compounds and wastes from chlorobenzene production. This information is currently considered TSCA confidential business information (CBI) and appropriate TSCA clearance procedures must be followed prior to use of this data for RCRA regulations. This data was not available in time for development of treatment standards for K085 wastes for proposal with the Second Third wastes. It is not clear whether this data will be available for proposal even with the Third Third.

The Agency believes that, as generated, K085 wastes are nonwastewaters that are most likely already regulated by the California List prohibition on Halogenated Organic Compounds (HOCs). However, this prohibition only established incineration as a method of treating HOCs and did not establish numerical treatment standards for particular halogenated organic constituents. Because of the restrictions on land disposal of HOCs, the Agency anticipates that K085 wastes are currently being incinerated and is hereby soliciting data generated from this incineration that may aid in the development of treatment standards for these wastes.

9. *K086.* Treatment standards for wastewater and nonwastewater forms of K086 in the Solvent Washes Subcategory were promulgated with the First Thirds. No standards were proposed or promulgated for all other K086 wastes. These include wastes in the Solvent Sludges Subcategory and the Caustic/Water Washes and Sludges Subcategory.

Performance data on the treatment of K086 wastes in the Caustic and Water Wash Subcategory are currently being developed by the Agency's Office of Research and Development. EPA expects to promulgate treatment standards for the remaining K086 waste subcategories prior to May 8, 1990 based on this and other data available. If complications arise in the use of this data, the Agency may propose to transfer some or all of the existing K086 standards to the other K086 Subcategories.

10. *K106.* Treatment standards for K106 nonwastewaters have previously been proposed based on a recycling/recovery technique (retorting) for the recovery of mercury (the primary hazardous constituent). This standard was not promulgated because, at the time, there was insufficient information to transfer the standard for K106 from mercury sulfide ores and other mercury wastes that the Agency believed were similar to the K106 wastes. At the time of today's proposal, the Agency has not completed its evaluation of retorting for K106 wastes. However, the Agency still believes that retorting is a viable option for developing treatment standards for K106 nonwastewaters.

Retorting of ores typically involves roasting the mercury sulfide ores at elevated temperatures in the presence of oxygen. This roasting converts the mercury salts to elemental mercury. The mercury is vaporized, swept from the retort in the off-gases, and subsequently condensed for later reuse. Retorting has been demonstrated on other wastes with greater than 1% total mercury. A number of K106 generators currently operate mercury retorts on-site for various other wastes that contain mercury. At least one facility is retorting a K106 waste. However, this K106 is significantly different from other K106 wastes, in that it is being generated as elemental mercury.

The Agency encountered problems during analysis of the possible alternative treatment options for K106. These problems were primarily the result of the apparent inability of typical cementitious stabilization techniques to reduce the leachability of mercury. The Agency attempted stabilization of K106 wastes using Portland cement, lime and fly ash, and kiln dust. The resultant data indicated that the leachability of mercury in the treated residues increased by orders of magnitude over the leachability in the untreated wastes. The Agency believes that the increase in

leachability of mercury after stabilization is probably due to the increased solubility of mercury sulfide at higher pH. In addition, this increase in leachability may be indicating that the mercury is not being chemically bound by the stabilization reagents. Alternatives to cementitious stabilization for mercury wastes currently under consideration include the use of other proprietary binders such as silicates and sulfides. The Agency is soliciting comments and data on stabilization techniques for mercury and is particularly interested in data for wastes (solid or liquid) with mercury concentrations higher than 1%.

Sulfide precipitation has been identified as the most likely candidate for BDAT for K106 wastewaters. This process involves the conversion of soluble mercury to a relatively insoluble mercury sulfide. Elemental mercury is slightly soluble in water, while mercury sulfide is practically insoluble in water. While filtration of elemental mercury can be effective for wastewaters, the reaction with sulfide and subsequent conversion to mercuric sulfide should result in a precipitate that is less soluble in water than the residual containing elemental mercury. However, elemental mercury is more amenable to simple retort operations than a mercury sulfide filter cake, because oxygen is not required to roast the elemental mercury, and additional air pollution control devices are not required to remove the sulfur dioxide generated from sulfide roasting.

In addition, while mercuric sulfide is insoluble in water under acid conditions, information appears to indicate that the leachability (or solubility) of the mercuric sulfide may increase under alkaline conditions. At this time, the Agency has not completed its evaluation of the environmental benefits and/or trade-offs of requiring mercury to be removed from wastewaters as a sulfide or as elemental mercury. The increase in removal efficiency with sulfide precipitation must be balanced against the potential for increased leachability under alkaline conditions and a waste which is more difficult to recover. This increased leachability is a valid concern, in that many operators of hazardous landfills dispose of all "metal" wastes together, and typically add excess lime to prevent migration of the other metals. One possible solution to this problem is for the Agency to establish special requirements for the disposal of mercury wastes. The Agency is specifically soliciting comments and data on all of these issues for mercury wastes.

Along with investigating the appropriateness of transferring existing performance data, the Agency intends to investigate chemical reduction of wastewaters followed by retorting of the filtration residuals containing elemental mercury (K106), and/or retorting of other concentrated mercury wastes.

b. Third Third Wastes. In section III.A.8.f. of today's preamble, the Agency is proposing treatment standards for both wastewater and nonwastewater forms of K023, K093, and K094 based on a transfer of incineration data for K024 wastes. In section III.A.8.c. of today's preamble, the Agency is proposing treatment standards for the nonwastewater forms of K002, K003, K005, K006, and K007. All of these wastes are Third Third wastes that were not originally scheduled to be promulgated until May 8, 1990. However, the statute does not preclude EPA from prohibiting the land disposal of a given waste ahead of schedule and in fact compels the Agency to prohibit the land disposal of hazardous wastes as soon as possible.

The following discussion is a synopsis of the approaches and options that the Agency is considering for establishing BDAT treatment standards for all remaining Third Third "K" wastes. The Agency is specifically soliciting comments on the approach to develop treatment standards for each of the individual wastes or treatability groups. While no treatment standards are proposed for these wastes in today's rule, the Agency does anticipate proposing standards for them on the schedule for development of the Third Thirds.

No treatment standards are proposed in today's rule for the wastewater forms of K002, K003, K005, K006, and K007. These wastewaters are anticipated to contain metals and possibly cyanides. The Agency is currently evaluating the possibility of transferring treatment performance data for these wastewaters based on chromium reduction, cyanide destruction, and metals precipitation/stabilization using existing data.

K026 nonwastewaters are expected to contain various concentrations of organo-nitrogen compounds (e.g., methyl ethyl pyridines). Numerical treatment standards are anticipated to be developed and proposed based on a transfer of treatment data (primarily incineration data) for compounds such as acetonitrile, nitrobenzenes, nitroanilines, and pyridine from wastes such as F003, F005, K011, K013, K014, K103, or K104.

K032, K033, and K034 are all wastes from the production of the halogenated multiple component pesticide, Chlordane. Numerical treatment standards are anticipated to be developed and proposed based on a transfer of treatment data (primarily incineration data) for mixtures such as Toxaphene and PCBs from wastes such as K041, K097, K098, P123, and U036.

EPA has data that suggest some K026, K032, K033, and K034 wastes may no longer be generated. The Agency is also considering the proposal of "No Land Disposal Based on No Generation" for certain nonwastewater forms of these four wastes. A treatment standard of "No Land Disposal Based on No Generation" was promulgated on August 8, 1988 for the nonwastewater forms of K100. While no BDAT standards were proposed or promulgated for the wastewater forms of K100, the soft hammer provisions did not apply to these wastes because they were originally scheduled with the Third Third wastes. Wastewater treatment standards for K100 are anticipated to be developed similar to the wastewater standards for K069, because K100 was listed as a waste leaching solution from the acid leaching of K069 wastes.

B. "Soft Hammer" Applicable Treatment Standards

The Agency has not promulgated treatment standards for the First Third and Second Third wastes in Tables B.(a) and B.(b). RCRA section 3004(g)(6) provides that if EPA fails to set treatment standards for any hazardous waste included in the schedule promulgated on May 28, 1986 (51 FR 19300) by the August 8, 1988 or June 8, 1989 statutory deadlines, such waste may be land disposed in a landfill or surface impoundment only if the unit meets certain statutory requirements and only if the generator makes certain certifications. These requirements have been termed the "soft hammer" provisions (see 53 FR 31179–31186, August 17, 1988). If the Agency has not set treatment standards for any hazardous waste by May 8 1990, such waste is absolutely prohibited from all forms of land disposal unless a "no migration" petition has been granted.

EPA has identified several treatment technologies that are generally considered appropriate for the nonwastewater forms of these wastes. These technologies include: metal recovery, leaching/oxidation, metals stabilization, ash stabilization, chemical oxidation, biodegradation, incineration, PCB incineration, and open detonation/open burning. Treatment technologies generally considered appropriate for the wastewater forms of these wastes

include: aqueous metal recovery, chromium reduction, metals precipitation, steam stripping, carbon adsorption, oxidation/reduction, chemical oxidation, biodegradation, incineration, and PCB incineration. The Agency is amending § 268.12 to include wastewater residues derived from the treatment of "soft hammer" wastes by certain processes, as well as leachate derived from the management of "soft hammer" wastes and "soft hammer" waste-contaminated groundwater. This action will allow these wastewater residues to be disposed in units not meeting minimum technological requirements and such resides will not be subject to the certification requirements of § 268.8.

The technologies are listed as general categories of technologies that EPA believes have a reasonable probability of application to the waste codes listed. These categories do not specify any particular type of technology (e.g., incineration can represent liquid incinerators, rotary kiln, or fluidized bed incinerators). The actual choice of a particular technology or even train of technologies depends on the physical and chemical characteristics of the specific waste. Specific selection of one technology depends on its functional design.

The Agency notes that many of these wastes, when existing as untreated wastes, are already prohibited from land disposal because they are California list wastes. Several of the organic hazardous wastes undoubtedly exceed the statutory levels for wastes containing halogenated organics (HOCs) and are thus subject to the HOC treatment standard. However, as was discussed in the August 17, 1988 final rule, treatment to comply with the California list prohibitions does not necessarily satisfy the "soft hammer" requirements of 40 CFR 268.8 and, in fact, the California list prohibitions represent the minimum treatment required for such "soft hammer" wastes prior to land dispoal (53 FR 31187). This principle applies in all cases except when the California list waste is subject to a statutory prohibition (such as California list metals). In the case of an overlap between a "soft hammer" waste and a California list statutory prohibition, the "soft hammer" provisions apply because they are potentially more protective. However, in no case may a waste be disposed of in excess of the California list prohibition levels.

The following tables are presented as an aid to generators seeking appropriate technologies to treat "soft hammer" F- and K-listed wastes. Several technologies are listed for each waste code, in descending order of preference. EPA notes that certain technologies are only appropriate for certain constituent types and that more than one treatment technology may be required (if practically available) to treat the different constituents of concern in the waste.

The Agency emphasizes that these tables are not to be considered as strict treatment guidelines. In general, however, EPA will use these tables in evaluating the demonstrations and certifications received for these wastes and is providing this information to aid the generator in determining the best practically available technology (if any) for treating his waste in compliance with § 268.8.

TABLE B. (A).–APPROPRIATE TREATMENT TECHNOLOGIES FOR FIRST THIRD AND SECOND THIRD NONWASTEWATERS

RCRA waste code	Potential California list applicability	Primary applicable treatment technologies
K041, K097, K098	Halogenated Organics	Incineration.
K042	Halogenated Organics	Incineration.
K105	PCBs/Halogen. Organ	PCB Incineration.
K017, K073	Halogenated Organics	Incineration, Biodegradation, Ash Stabilization.
K031, K084, K101 & K102/High Arsenic	Arsenic	Metals Recovery, Leaching/Oxidation, Metals Stabilization.
K046/explosive	Lead	Open Detonate/Burn, Oxidation of Explosive, Incineration, Metals Stabilization.
K069/CaSO4	Lead	Leaching/Oxidation, Metals Stabilization.
K085	Halogenated Organics & PCB's	PCB Incineration, Biodegradation, Ash Stabilization.
K035, K083, K086 solv. sludges caust. water	Organics and/or Metals	Incineration, Wet Air Oxidation, Biodegradation, Ash Stabilization.
K106	Mercury	Metals Recovery, Metals Stabilization.

TABLE B. (B).–APPROPRIATE TREATMENT TECHNOLOGIES FOR FIRST THIRD AND SECOND THIRD WASTEWATERS

RCRA waste code	Potential California list applicability	Primary applicable treatment technologies
K025	Halogenated Organics	Carbon Adsorption, Incineration.
K041, K097, K098	Halogenated Organics	Steam Stripping, Carbon Adsorption, Biodegradation.
K042	Halogenated Organics	Steam Stripping, Carbon Adsorption, Biodegradation.
K105	PCBs/Halog. Organics	Carbon Adsorption, Biodegradation, PCB Incineration.
K004, K008, K061/all	Chromium	Chromium Reduction, Metals Precipitation.
K017, K021, K073	Halogenated Organics	Steam Stripping, Carbon Adsorption, Chemical Oxidation, Biodegradation.
K022, K035, K060, K083	Unlikely to be Applicable	Steam Stripping, Carbon Adsorption, Chemical Oxidation, Biodegradation, Metals Precipitation.
K031, K046/nonexplosive, K069/all, K084, K106	Arsenic, Lead or Mercury	Oxidation/Reduction, Metals Precipitation.
K046/explosive	Lead	Oxidation of Explosive, Metals Precipitation.
K085	Halogenated Organics & PCB's	PCB Incineration, Biodegradation, Carbon Adsorption.
K086, solv. sludges caust. water	Halogenated Organics and/or Metals	Biodegradation, Carbon Adsorption, Chromium Reduction, Metals Precipitation.

C. Capacity Determinations

1. Determination of Alternative Capacity and Effective Dates for Surface Land Disposed Wastes for Which Treatment Standards Are Proposed

a. Total Quantity of Land Disposed Wastes. The capacity analyses for wastes for which EPA is today proposing treatment standards were performed using the National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (the TSDR Survey). EPA conducted the TSDR Survey during 1987 and early 1988 to obtain comprehensive data on hazardous waste management capacity and on volumes of hazardous waste being land disposed. Survey data are part of the record for this proposed rule, and are obtainable from the Agency's contractor (Versar, Inc.).

EPA estimated the total quantities of wastes addressed in today's proposal that are land disposed annually based on the results of the TSDR Survey. The quantities of waste by land disposal method are presented in Table III.C.1.(a). Some methods of land disposal, including utilization of salt domes and salt bed formations and underground caves and mines, are not addressed in the capacity analysis because of insufficient data on the types and volumes of wastes disposed by these methods.

The TSDR survey indicated that about 1,695 million gallons of the wastes for which standards are proposed today were land disposed in 1987. This includes less than 1 million gallons that were disposed in surface impoundments, and will therefore require alternative treatment capacity. Approximately 5 million gallons of the wastes addressed today were stored in surface impoundments and 9 million were stored in waste piles. These stored wastes will eventually be treated, recycled or permanently disposed in other units. To avoid double-counting, the volumes of wastes reported as being stored in surface impoundments or waste piles have not been included in the volume of wastes requiring alternative treatment capacity. After the applicable prohibition effective date for any waste, placement of prohibited wastes in waste piles or surface impoundments for purposes of storage is prohibited.

The 1987 TSDR Survey indicated that less than 1 million gallons per year of wastes addressed today were treated annually in surface impoundments that do not meet the minimum technology requirements. This amount should now be considerably less (indeed, zero) since the November 8, 1988 deadline for retrofitting surface impoundments has passed. The Agency assumes that this volume of waste is now being sent off-site for treatment. Therefore, this amount is included as treatment capacity required in today's proposed rule.

In addition, 6 million gallons are treated in waste piles, 17 million gallons are disposed in land treatment units or landfills, and 1,657 million gallons are underground injected; all of these wastes will require alternative treatment capacity.

b. Required Alternative Capacity for Surface Land Disposed Wastes. The Agency assessed the requirements resulting from today's proposal for alternative treatment capacity for land disposed wastes other than those which are underground injected. EPA first characterized the volumes of wastes for which treatment standards are being proposed, since these wastes require alternative treatment. Waste streams were characterized on the basis of land disposal method, waste code, and physical/chemical form. Using this information, the Agency determined which treatment technologies are applicable to the waste volumes and placed the wastes into treatability groups. The volumes of alternative treatment capacity that would be required when owners or operators comply with the land disposal restrictions being promulgated were then determined. Based on this analysis, the Agency estimates that today's rule could affect about 1,695 million gallons of wastes that are land disposed annually. Of this total, about 1,683 million gallons will require alternative treatment capacity, the remainder being stored. Wastes which are underground injected account for 1,657 million gallons. Determinations of alternative capacity and effective dates for these wastes are presented separately, following the discussion of surface land-disposed wastes.

As explained elsewhere in this preamble, EPA is, with limited exceptions, proposing treatment standards expressed as concentration limits based on the performance of the Best Demonstrated Available Technology (BDAT). Where EPA promulgates a performance standard rather than a method as the treatment standard, it is not required that the BDAT be used to achieve the concentration levels. However, the BDAT technologies, as described in Section III.A., were used as the basis for determining available capacity.

The volumes of surface land-disposed wastes that require alternative treatment/recycling capacity are presented in Table III.C.1.(b). This table includes only the quantities of wastes that require alternative commercial capacity; the volumes given do not include wastes that can be treated on-site by the generator. The Agency has included only BDAT treatment in its assessment of both off-site and on-site capacity. EPA develops BDAT such that a well-designed and well-operated treatment process should be capable of complying with the standards.

c. Capacity Currently Available and Effective Dates. Table III.C.1.(a) presents the volumes of wastes that require alternative treatment capacity, arranged according to the technology description of the alternative treatment required. The amount of capacity that is available in each case is also presented. Available capacity at commercial facilities was determined using the TSDR Survey. The available capacity presented below is the estimated capacity available prior to promulgation of this rule after subtracting the capacity required for surface land-disposed solvent wastes, surface disposed California List Halogenated Organic Compound (HOC) wastes, and surface disposed First Third wastes previously restricted from land disposal.

It is important to note that some of these wastes, because of their actual physical form, cannot meet treatment standards simply by using the technology identified as BDAT. These wastes must be treated through several steps, called a treatment train. The Agency assumed that the residuals in such cases will be treated using alternative technologies prior to land disposal; therefore, the total volumes reported were assigned to appropriate technologies.

Wastewater Treatment. Treatment standards proposed for cyanide-containing wastes F007, F008, F009, F011, P013, P021, P029, P030, P074, P098, P099, P104, P106, and P121 are based on wet air oxidation. The Agency has also identified alkaline chlorination followed by chemical precipitation as a technology which can be used to meet the treatment standard. For F006, F012, and F019, electrolytic oxidation followed by alkaline chlorination has been identified as BDAT. The treatment standards for metals in treatment residuals are based on stabilization. The Agency estimates that 5.0 million gallons per year of these wastes which have been surface land-disposed will require cyanide treatment as a result of today's proposed treatment standards.

After analyzing the new TSDR Survey data, the Agency has determined that sufficient commercial capacity does exist for the remainder of these wastes

(5 million gallons). Therefore, the Agency is not proposing to grant a national capacity extension for these wastes that are surface land disposed.

In the First Third Final Rule, the Agency set treatment standards for the metals in F006 nonwastewaters based on stabilization. In today's proposed rule, the Agency is proposing treatment standards for cyanides in F006 nonwastewaters based on the transfer of the proposed treatment standards for F012 nonwastewaters. The Agency believes that a pretreatment step to destroy the cyanides should be done before stabilization.

In the First Third Final Rule, the Agency estimated that 129 million gallons of F006 wastes would require alternative treatment. The Agency believes that these wastes are currently being pretreated for cyanides. Therefore, no additional capacity is believed to be required for F006 nonwastewaters because of today's proposed cyanide standards and a capacity variance is not being proposed.

Wastewater Treatment/Incineration. The treatment standards proposed for F010 wastes are based on incineration of the wastes with greater than 5% organics. The Agency estimates that <1 million gallons per year of F010 wastes will require incineration as a result of today's proposed rule.

After analyzing the TSDR Survey data, the Agency has determined that there is enough treatment capacity commercially available to incinerate the entire volume of F010 waste requiring alternative treatment. Therefore, the Agency is not proposing to grant a capacity extension to F010 wastes. Treatment standards proposed for K009 and K010 are based on incineration for nonwastewaters and, for wastewaters, steam stripping, biological treatment or steam stripping followed by biological treatment. The treatment standards for metals in treatment residuals are based on stabilization.

Treatment standards proposed for K011, K013, and K014 wastes are based on incineration followed by stabilization of residuals for nonwastewaters, and on wet air oxidation followed by biological treatment for wastewaters. These wastes will require incineration or wastewater treatment as a result of today's proposed treatment standards.

After analyzing the new TSDR Survey data, the Agency has determined that there is enough commercial incineration capacity available to treat the <1 million gallons of nonwastewater K011, K013, and K014 that is not underground injected. Therefore, the Agency is not proposing to grant a national capacity extension for K011, K013, and K014 wastes that are surface land-disposed.

For K027, K039, K113–K116, P040, P041, P043, P044, P062, P085, P109, P111, U058, U087, U221, and U223 wastes, the Agency is proposing to specify incineration as a method of treatment for nonwastewaters, and carbon adsorption as a method of treatment for wastewaters rather than developing numerical standards. Based on TSDR Survey data, the Agency estimates that 8 million gallons per year of surface land-disposed nonwastewaters will require incineration as a result of today's proposed treatment standards. No wastewaters were identified as requiring alternative treatment.

After analyzing the TSDR Survey data, the Agency has determined that there is enough commercial capacity available to treat the K027, K039, K113–K116, P040, P041, P043, P044, P062, P085, P109, P111, U058, U087, U221, and U223 wastes requiring alternative treatment. Therefore, the Agency is not proposing to grant a capacity extension for surface land disposal of these wastes.

No Land Disposal. The Agency is proposing a treatment standard of "no land disposal" for K005, K007, and K029 nonwastewaters, based on the belief that these wastes are no longer being generated. At this time, the Agency is not proposing treatment standards for the wastewater forms of K005, K007, and K029. The Agency may develop standards for these wastes prior to May 8, 1990 if there is an identified need for such standards.

The Agency is proposing a treatment standard of "no land disposal" for K002, K003, K004, K006, K008, K095, and K096 nonwastewaters, based on the belief that these wastes can be totally recycled. The Agency has obtained information for K002, K003, and K006 indicating that several facilities are selling mixtures of these wastes, recyling them back to the production process, or sending them to secondary lead smelting facilities for metals recovery. The Agency believes that these types of recycling and/or recovery techniques can be used for all K002, K003, and K006 nonwastewaters. The Agency estimates that a maximum of 1 million gallons per year of K002, K003, and K006 nonwastewaters may require commercial secondary lead smelting. Adequate capacity exists for this volume of waste; therefore, a capacity extension is not being proposed for nonwastewaters.

The Agency is basing the proposed treatment standard of "no land disposal" for K004, K008, K095 and K096 nonwastewaters on information obtained during BDAT sampling. The TSDR Survey indicates small volumes of K004 and K008 were reported to be land disposed in 1986. However, data obtained during the BDAT sampling visits indicates that these wastes now are being totally recycled; therefore, no alternative capacity is required and a capacity extension is not proposed.

At this time, the Agency is not proposing treatment standards for the wastewater forms of these wastes. The Agency may develop standards for K002, K003, K006, K095, and K096 wastewaters prior to May 8, 1990, if there is an identified need for such standards. Since K004 and K008 wastewaters are First Third wastes, their land disposal will continue to be restricted by the "soft hammer" provisions.

Incineration. Treatment standards proposed for F024, K023, K028, K036 wastewaters, K038, K040, K043, K093 K094, P039, P071, P089, P094, P097, U028, U069, U088, U102, U107, U190, and U235 are based on incineration. The treatment standards for metals in residuals from treatment of F024 and K028 are based on stabilization.

The treatment standards proposed for F024 and K043 are based on incineration performance data; the treatment standards proposed for K028 are based on the transfer of the incineration standards from F024; the treatment standards proposed for K036 wastewaters, K038, K040, P039, P071, P089, P094, P097, and U235 are based on the transfer of the incineration standards from K037; and the treatment standards proposed for K023, K093, K094, U028, U069, U088, U102, U107, and U190 are based on the transfer of the incineration standards from K024.

The Agency estimates the <1 million gallons of these wastes will require incineration as a result of today's proposed treatment standards. After analyzing the TSDR Survey data, the Agency has determined that there is enough incineration capacity commercially available to treat these wastes. Therefore, the Agency does not propose to grant a capacity extension for these wastes.

Wastes for Which Standards are Not Being Proposed. For today's proposed rule, the Agency is not proposing treatment standards for K025 wastewaters (treatment standards for nonwastewater K025 were promulgated in the First Third final rule), K041, K042, K097, K098, and K105. These wastes will be restricted from land disposal under the "soft hammer" provisions.

TABLE III.C.1.(a).—VOLUME OF LAND DISPOSED WASTES FOR WHICH STANDARDS ARE BEING PROPOSED

[Million gallons/year]

Storage:	
Waste piles	9
Surface impoundments	5
Treatment:	
Waste piles	6
Surface impoundments	<1
Disposal:	
Landfills	17
Land treatment	<1
Surface impoundments	<1
Underground injected	1,657
Total	1,695

TABLE III.C.1.(b)*.—REQUIRED ALTERNATIVE COMMERCIAL TREATMENT/RECYCLING CAPACITY FOR SURFACE LAND-DISPOSED WASTES

[Million gallons/year]

Waste code	Capacity required for surface land disposed wastes
First third wastes:	
F007	1.3
F008	2.7
F009	0.3
F019	9.5
K004	0.0
K008	0.0
K011	0.2
K013	0.1
K014	<0.4
K036	0.0
P030	<0.1
P039	<0.1
P041	0.0
P071	<0.1
P089	<0.1
P094	<0.1
P097	0.0
U221	0.3
U223	<0.1
Second third wastes:	
F010	0.2
F011	0.1
F012	0.1
F024	<0.1
K009	0.0
K010	0.0
K027	7.6
K028	0.0
K029	0.0
K038	0.0
K039	0.0
K040	0.0
K043	0.0
K095	0.0
K096	0.0
P029	0.0
P040	0.0
P043	0.0
P044	<0.1
P062	0.0
P074	0.0
P085	0.0
P098	<0.1
P104	0.0

TABLE III.C.1.(b)*.—REQUIRED ALTERNATIVE COMMERCIAL TREATMENT/RECYCLING CAPACITY FOR SURFACE LAND-DISPOSED WASTES—Continued

[Million gallons/year]

Waste code	Capacity required for surface land disposed wastes
P106	<0.1
P111	0.0
U028	<0.1
U058	0.0
U107	0.0
U235	0.0
Third third wastes:	
K002	0.4
K003	0.4
K005	0.0
K006	0.4
K007	0.4
K023	0.0
K093	<0.1
K094	<0.1
K013	0.0
P021	0.0
P099	0.0
P109	0.0
P121	0.0
U069	<0.1
U087	0.0
U088	0.0
U102	0.0
U190	<0.1
Newly listed wastes:	
K113	0.0
K114	0.0
K115	0.2
K116	0.0

* NOTE.—The volumes presented here include all types of treatment required (i.e., all phases of treatment trains, where applicable).

TABLE III.C.1.(c).—ALTERNATIVE COMMERCIAL TREATMENT/RECYCLING CAPACITY FOR SURFACE LAND DISPOSED WASTES

[Million gallons/year]

Technology	Available	Required surface land disposed
Incineration:		
Liquids	216	<1
Solid/sludge	76	8
Wastewater treatment:		
Wet air oxidation or alkaline chlorination and chemical precipitation	91	5
Wet air oxidation and biological treatment	0	0
Hydrolysis and biological treatment or biological treatment and steam stripping	0	0
Carbon adsorption	2	0

TABLE III.C.1.(c).—ALTERNATIVE COMMERCIAL TREATMENT/RECYCLING CAPACITY FOR SURFACE LAND DISPOSED WASTES—Continued

[Million gallons/year]

Technology	Available	Required surface land disposed
Stabilization:	264	9
Secondary Smelting:	52	1

2. Contaminated Soil and Debris Capacity Variance

In today's rule, the Agency is granting a national capacity variance for certain contaminated soils for which treatment standards are based on incineration. For the purpose of determining whether a contaminated material is subject to this national variance, soil is defined as materials that are primarily geologic in origin such as silt, loam, or clay, and that are indigenous to the natural geological environment. In certain cases soils will be mixed with liquids or sludges. As was explained in the preamble of the solvents and dioxins final rule, the Agency considers liquid- or sludge-containing waste generated by a CERCLA response action, to be subject to the land disposal restriction requirements (51 FR 40583). However, the Agency will determine on a case-by-case basis whether all or portions of such mixtures should be considered soil or debris (51 FR 40577).

Since the promulgation of the First Thirds rule, additional incineration capacity is believed to have become operational. The totals shown in Table III.C.1.(c) reflect this added capacity. However, the increases are overwhelmingly in capacity to burn sludges mixed with other combustible liquids.

Increases in rotary kiln incineration capacity—the type most appropriate for soil and debris—have been relatively small. EPA believes that capacity is still inadequate for incineration of contaminated soil and debris. Therefore, a 2-year national capacity variance is proposed for soil and debris contaminated with wastes for which BDAT is incineration.

3. Capacity Determinations for Underground Injected Wastes

The Agency is continuing to use a hierarchical approach in making decisions on adequacy of treatment capacity. As explained in previous preambles (52 FR 32450, August 27, 1887 and 53 FR 30912, August 16, 1988), EPA is allocating available capacity first to

those wastes disposed in surface units, next to wastes resulting from CERCLA and RCRA cleanups, and finally, to injected wastes. Based on this approach, the Agency is proposing the following effective dates for injected wastes.

a. Effective Date Determinations for Scheduled Wastes for Which EPA Has Not Set Treatment Standards. The Agency has not proposed treatment standards for the wastes listed in Table III.C.3.(a) below. These wastes are not prohibited from land disposal by underground injection until the Agency sets treatment standards and effective dates, or until May 8, 1990.

b. Scheduled Wastes With Proposed Treatment Standards Which Current Data Indicate Are Not Being Injected. The wastes listed in Table III.C.3.(b) below are wastes for which standards are being proposed and which current data indicates are not being injected. Therefore, EPA is proposing that these wastes be prohibited from underground injection upon the date of final promulgation of this rule. The Agency requests comment on whether any of these wastes are being injected; if these wastes are injected, comment is requested on what quantities are being injected and what are their characteristics.

The Agency is aware that leachate gathered from leachate collection systems is frequently injected. Moreover, since a number of surface impoundments have recently stopped receiving hazardous wastes, those dilute wastes may be diverted to injection wells. Both the leachate and any wastes injected as a result of impoundments closing may contain wastes which have standards established, but for which the Agency has no data indicating whether the waste is injected. Therefore, the Agency has not evaluated whether a capacity extension is warranted. The Agency specifically requests comment on whether such wastes are injected, and on the quantities and characteristics of these wastes. Based on this data, the Agency may elect to promulgate the prohibition dates for injected wastes proposed today, or may establish new dates for all or some of the wastes.

EPA is proposing to set treatment standards for the nonwastewater components of K002 and K006, both Third Third wastes. The Agency has data indicating that these wastes are not being land disposed. EPA has not set BDAT for K002 or K006 wastewaters. These will remain Third Third wastes and will not be subject to "soft hammer" provisions. EPA is soliciting further comment on the disposal of K002 and K006 in injection wells.

c. Scheduled Wastes With Proposed Treatment Standards Which Current Data Indicate Are Being Injected. Table III.C.3.(c) lists those wastes with proposed treatment standards for which the Agency has data indicating that they are being injected underground. The Table summarizes the proposed effective dates for the prohibitions against the underground injection of wastes addressed in today's proposal.

(1) Capacity Determinations for Wastes Requiring Wastewater Treatment. The treatment standards for F007, F008, F009, F011, F012, F019 wastes (wastes from electroplating and heat treating), P029 (cooper cyanides), P030 (soluble cyanide salts), P063 (hydrogen cyanide), and P098 (potassium cyanide) wastes are based on wet air oxidation or on electrolytic oxidation, followed by alkaline chlorination. An estimated 132 million gallons per year of these wastes will require cyanide wastewater treatment. Of the 132 million gallons, approximately 127 million gallons are being disposed by underground injection. Table III.C.3.(c) gives the volumes of wastes injected for the indicated waste codes. These wastes may be injected in individual streams or as mixtures of wastes.

By comparing the volumes of injected wastes with available commerical treatment capacity, the Agency has determined that there is inadequate wastewater treatment capacity commerically available to treat the large volumes of F007 wastes that are injected. Therefore, the Agency is proposing to grant a national capacity extension for F007 wastes which are injected underground.

Over 91 million gallons per year of available alternate commercial treatment capacity has been identified for the low volumes of F008, F009, F011, F012, F019, P029, P030, and P098 wastes injected; therefore, no capacity extensions are proposed for these wastes. Since all of these are First Third wastes, the maximum extension available is to August 8, 1990 (see 51 FR 40573, November 7, 1986).

P063 wastes are reported in the TSDR survey only as part of mixed waste streams with K011, K013, and K014 wastes. When mixed waste streams are reported, but no breakdown of the volumes of the component wastes is given, the total volume is assumed to be divided equally among the components. This results in 174 million gallons being attributed to P063. The Agency believes that this is an extremely large volume for this waste code, and that the actual volume of P063 is much lower. As a result, EPA is not proposing to grant a capacity extension to P063. However, the Agency solicits comment on the volumes and characteristics of any P063 wastes being injected. Any new information will be evaluated and used in making a final determination on the need for a capacity extension for this waste.

(2) Capacity Determination for Injected Wastes Requiring Incineration. The treatment standards for P071 and P089 are based on the transfer of the incineration standards for K037 waste. Phthalate wastes U028, U088, U107, and U190 have treatment standards based on the transfer of the incineration standards for K024 wastes.

These wastes are currently injected in low volumes (see Table III.C.3.(c)), if at all. The Agency has determined that adequate treatment capacity exists for these wastes. Table III.C.1.(c) indicates that over 216 million gallons per year of commerical treatment capacity exists for liquid wastes requiring incineration. Therefore, no national capacity variances are proposed. These wastes will be banned from underground injection upon promulgation of this rule unless comments and data received indicate that a capacity extension is warranted.

(3) Capacity Determination for Injected K009 and K010 Wastes. The Agency is setting treatment standards for K009 and K010 based on incineration for nonwastewaters and biological treatment and/or steam stripping for wastewaters. The Agency has information indicating that approximately 54 million gallons per year of each of these wastes are being injected. Table III.C.1.(c) indicates that no alternate commercial treatment capacity is available for these wastes. The Agency is proposing to grant two-year national capacity extensions for both K009 and K010 waste codes. Also, the Agency solicits comment on whether additional volumes of K009 and K010 are being injected and, if so, the characteristics of those wastes.

(4) Capacity Determination for Injected K011, K013, and K014 Wastes. A significant volume of K011, K013, and K014 (wastes from acrylonitrile production) are currently being land disposed by underground injection. Treatment standards are based on incineration for nonwastewater components, and wet air oxidation (followed by biological treatment) for wastewaters.

The data indicate that neither adequate commercial incineration capacity for injected K011, K013, and K014 nonwastewaters (approximately 290 million gallons per year injected

versus 76 million gallons of available commerical treatment capacity) nor sufficient wet air oxidation capacity for the wastewater K011, K013, and K014 (829 million gallons per year injected versus 91 million gallons of available commerical treatment capacity) exists.

The Agency is, therefore, proposing to grant a national capacity extension for all K011, K013, and K014 wastes injected underground until August 8, 1990.

(5) Capacity Determination for Injected U221, U223, and P044 Wastes. Table III.C.3.(c) indicates that approximately 27 million gallons per year of U221 wastes are being injected underground, and additional volumes of U223, and P044 wastes are being injected in mixed waste streams.

Treatment standards are based on incineration for nonwastewater components, and on carbon adsorption for wastewaters. The data indicate that there is adequate treatment capacity for both nonwastewaters and wastewaters (see Table III.C.1.(c)). No national capacity extensions are proposed for U221, U223, or P044 wastes. The Agency solicits comment on the volumes and characteristics of any of these wastes that are being injected.

TABLE III.C.3.(A)

[Second Third Wastes For Which Treatment Standards Are Not Proposed]

K019, K025, K029, K041, K042, K097, K098, K105
P002, P003, P007, P014, P026, P027, P049, P054, P057, P060, P066, P067, P072, P107, P112, P113, P114
U002, U003, U005, U008, U011, U014, U015, U020, U021, U023, U025, U026, U032, U035, U047, U049, U057, U059, U060, U062, U070, U073, U080, U083, U092, U093, U094, U095, U097, U098, U099, U101, U106, U109, U110, U111, U112, U114, U116, U119, U127, U128, U131, U135, U138, U140, U143, U144, U146, U147, U149, U150, U161, U162, U163, U164, U165, U168, U169, U170, U172, U173, U174, U176, U178, U179, U189, U193, U196, U203, U205, U206, U208, U213, U214, U215, U216, U217, U218, U239, U244

TABLE III.C.3.(B)

[Wastes for Which Treatment Standards Are Proposed Which Are *Not* Underground Injected]

FIRST THIRD
F006, K004 (nonwastewaters), K036 (wastewaters)
P039, P041, P094, P097

SECOND THIRD
f010, F024
K027, K028, K029 (nonwastewaters), K038, K039, K040, K043

TABLE III.C.3.(B)—Continued

[Wastes for Which Treatment Standards Are Proposed Which Are *Not* Underground Injected]

K095 (nonwastewaters), K096 (nonwastewaters)
P040, P043, P062, P074, P085, P104, P106, P111
U058, U235

THIRD THIRD
K002 (nonwastewaters), K003 (nonwastewaters)
K005 (nonwastewaters), K006 (nonwastewaters)
K007 (nonwastewaters), K023, K093, K094
P021, P099, P109, P121
U069, U087, U102

NEWLY LISTED WASTES
K113, K114, K115, K116

Table III.C.3.(C)

[Wastes With Treatment Standards Proposed Which *Are* Being Underground Injected]

Waste code	Volume of injected waste requiring treatment capacity
FIRST THIRD	
F007	*127.6
F008	*<0.1
F009	*<0.1
F019	<0.1
K011	*512.7
K013	*486.6
K014	*126.3
P030	<0.1
P063	184.3
P071	<0.1
P089	<0.1
U221	26.8
U223	*<0.1
SECOND THIRD	
F011	*0.0
F012	*0.0
K009	54.4
K010	54.4
P029	*<0.1
P044	*0.0
P098	<0.1
U028	*0.0
U107	*0.0
THIRD THIRD	
U088	*0.0
U190	*<0.1

*Indicate wastes are injected in mixed waste streams. Wastes with no volumes indicated may be injected as part of these mixed streams.

TABLE III.3.C.(D)

[Summary of Effective Dates for Underground Injected Wastes With Standards Proposed]

Waste	Proposed effective date
First Third:	
F007, K011, K014	August 8, 1990
F008, F009, F019, P030, P063, P071, P089, U221, U223	June 8, 1989

TABLE III.3.C.(D)—Continued

[Summary of Effective Dates for Underground Injected Wastes With Standards Proposed]

Waste	Proposed effective date
Second Third:	
K009, K010	June 8, 1991
F011, F012, P029, P044, P098, U028, U107	June 8, 1989
Third Third:	
U088, U190	June 8, 1989

IV. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR Part 271.

Prior to HSWA, a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

Today's rule is proposed pursuant to sections 3004(d) through (k), and (m), of RCRA (42 U.S.C. 6924(d) through (k), and (m)). Therefore, it will be added to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are

promulgated pursuant to HSWA and take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions in Table 1, as discussed in the following section. When this rule is promulgated, Table 2 in 40 CFR 271.1(j) will be modified also to indicate that this rule is a self-implementing provision of HSWA.

B. Effect on State Authorizations

As noted above, EPA will implement today's proposal in authorized States until their programs are modified to adopt these rules and the modification is approved by EPA. Because the rule is proposed pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that HSWA interim authorization will expire on January 1 1993 (see 40 CFR 271.24(c)).

Section 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modification to EPA for approval. The deadline by which the State must modify its program to adopt this proposed regulation will be determined by the promulgation of the final rule in accordance with § 271.21(e). These deadlines can be extended in certain cases (see § 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's proposal. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of these regulations are not required to include standards equivalent to these regulations in their application. However, the State must modify its program by the deadline set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these regulations must include standards equivalent to these regulations in their application. The requirements a state must meet when submitting its final authorization application are set forth in 40 CFR 271.3.

The amendments being proposed today need not affect the State's Underground Injection Control (UIC) primacy status. A State currently authorized to administer the UIC program under the Safe Drinking Water Act (SDWA) could continue to do so without seeking authority to administer these amendments. However, a State which wished to implement Part 148 and receive authorization to grant exemptions from the land disposal restrictions would have to demonstrate that it had the requiste authority to administer sections 3004(f) and (g) of RCRA. The conditions under which such an authorization may take place are summarized below and are discussed in a July 15, 1985 final rule (50 FR 28728).

C. State Implementation

The following four aspects of the framework established in the November 7, 1986, rule (51 FR 40572) affect State implementation of today's proposal and impact State actions on the regulated community:

1. Under Part 268, Subpart C, EPA is proposing land disposal restrictions for all generators, treaters, storers, and disposers of certain types of hazardous waste. In order to retain authorization, States must adopt the regulations under this Subpart since State requirements can be no less stringent than Federal requirements.

2. Also under Part 268, EPA is proposing to grant and rescind two-year national variances from the effective dates of the land disposal restrictions based on an analysis of available alternative treatment, recovery, or disposal capacity. Under § 268.5, case-by-case extensions of up to one year (renewable for one additional year) may be granted for specific applicants lacking adequate capacity.

The Administrator of EPA is solely responsible for granting variances to the effective dates because these determinations must be made on a national basis. In addition, it is clear that RCRA section 3004(h)(3) intends for the Administrator to grant case-by-case extensions after consulting the affected States, on the basis of national concerns which only the Administrator can evaluate. Therefore, States cannot be authorized for this aspect of the program.

3. Under § 268.44, the Agency may grant waste-specific variances from treatment standards in cases where it can be demonstrated that the physical and/or chemical properties of the wastes differ significantly from wastes analyzed in developing the treatment standards, and the wastes cannot be treated to specified levels or treated by specified methods.

The Agency is solely responsible for granting such variances since the result of such an action may be the establishment of a new waste treatability group. All wastes meeting the criteria of these new waste treatability group may also be subject to the treatment standard established by the variance. Granting such variances may have national impacts; therefore, this aspect of the program is not delegated to the States at this time.

4. Under § 268.6, EPA may grant petitions of specific duration to allow land disposal of certain hazardous wastes where it can be demonstrated that there will be no migration of hazardous constitutents for as long as the waste remains hazardous. States which have the authority to impose restrictions may be authorized under RCRA section 3006 to grant petitions for exemptions from the restrictions. Decisions on site-specific petitions do not require the national perspective required to restrict wastes or grant extensions. EPA will be handling "no migration" petitions at Headquarters, though the States may be authorized to grant these petitions in the future. The Agency expects to gain valuable experience and information from review of "no migration" petitions which may affect future land disposal restrictions rulemakings. In accordance with RCRA section 3004(i), EPA will publish notice of the Agency's final decision on petitions in the **Federal Register**.

States are free to impose their own disposal restrictions if such actions are more stringent or broader in scope than the actions of Federal programs (RCRA section 3009 and 40 CFR 271.1(i)). Where States impose such restrictions, the broader and more stringent State restrictions govern.

V. Effect of the Land Disposal Restrictions Program on Other Environmental Programs

A. Discharges Regulated Under the Clean Water Act

As a result of the land disposal restrictions program, some generators might switch from land disposal of restricted Second Third wastes to discharge to publicly-owned treatment works (POTWs) in order to avoid incurring the costs of alternative treatment. In shifting from land disposal to discharge to POTWs, an increase in human and environmental risks could occur. Also as a result of the land disposal restrictions, hazardous waste genertors might illegally discharge their waste to surface waters without treatment, which could cause damage to the local ecosystem and potentially pose health risks from direct exposure or bioaccumlation.

Some generators might treat their wastes prior to discharging to a POTW, but the treatment step itself could increase risks to the environment. For example, if incineration were the pretreatment step, metals and other hazardous constituents present in air scrubber waters could be discharged to surface waters. However, the amount of Second Third waste shifted to POTWs would be limited by such factors as the physical form of the waste, the degree of pretreatment required prior to discharge, and State and local regulations.

B. Discharges Regulated Under the Marine Protection, Research, and Sanctuaries Act

Management of some of the hazardous wastes included in today's proposed rulemaking could be shifted from land disposal to ocean dumping and ocean-based incineration. If the cost of ocean-based disposal plus transportation were lower than the cost of land-based treatment, disposal, and transportation, this option could become an attractive alternative. In addition, ocean-based disposal could become attractive to the regulated community if land-based treatment were not available.

However, the Ocean Dumping Ban Act of 1988 has restricted ocean dumping of sewage sludge and industrial wastes to existing, authorized dumpers until December 31, 1991, after which "* * * it shall be unlawful for any person to dump (sewage sludge or industrial wastes) into ocean waters * * *". Therefore, the Ocean Dumping Ban Act has made moot any economic or other incentive to ocean dump industrial hazardous wastes, including the wastes subject to this regulation.

C. Air Emissions Regulated Under the Clean Air Act

Some treatment technologies applicable to Second Third wastes could result in cross-media transfer of hazardous constituents to air. For example, incineration of metal-bearing wastes could result in metal emissions to air. Some constituents, such as chromium, can be more toxic if inhaled than if ingested. Therefore, it might be necessary to issue regulatory controls for some technologies to ensure they are operated properly.

The Agency has taken several steps to address this issue. EPA has initiated a program to address metal emissions from incinerators. It has also initiated two programs under section 3004(n) to address air emissions from other sources. The first program will address fugitive emissions from equipment such as pumps, valves, and vents from units processing concentrated organic waste streams. The second program will address other source of air emissions, such as tanks and waste transfer and handling.

D. Clean Up Actions Under the Comprehensive Environmental Response, Compensation, and Liability Act

The land disposal restrictions may have significant effects on the selection and implementation of response actions that are taken under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). There are three primary areas in which these effects may occur.

One area that may be affected by the LDR is in the selection of treatment standards at the remedial action site. The cleanup standards set at CERCLA sits are risk-based, while on the other hand, treatment standards developed under the land disposal restrictions program are technology-based. Therefore, the technology-based treatment standards may be more stringent than the risk-based cleanup standards developed based on the CERCLA selection of remedy criteria.

Another area that may be affected is in the treatment of soil and debris contaminated with wastes restricted from land disposal. Contaminated soil and debris are a primary type of waste that must be remediated at most CERCLA sites. In many cases, the soil matrix is different from that of the industrial waste for which treatment standards are set. CERCLA site managers must either comply with the treatment standards or request and be granted a variance from the treatment standard (§ 268.44) or a "no-migration" variance (§ 268.6).

Finally, even though the hazardous substances at a CERCLA remediation site may have been disposed prior to the effective date of RCRA, if the action involves excavation and subsequent disposal, the wastes are subject to the land disposal restrictions. If a waste is excavated from a unit, treated, and redisposed, "placement" of the waste in a land disposal unit has occurred and the treatment standard must be met. However, if the waste is capped in place, "placement" has not occurred and the treatment standard does not have to be met.

E. Applicability of Treatment Standards to Wastes from Pesticides Regulated Under the Federal Insecticide, Fungicide, and Rodenticide Act

A number of generators of pesticide waste that have heretofore been comparatively unaware of the land disposal restrictions may be regulated when today's proposed rulemaking is promulgated. This will require that the agency develop guidance materials and provide training on how to comply with the requirements of the land disposal restrictions.

Generators of significant quantities of pesticide P and U wastes are farmers and commercial pesticide aplicators. The provisions of 40 CFR 262.70 exempt farmers from regulation under the land disposal restrictions program; however, no such exemption exists for commercial applicators. Such generators of hazardous wastes have traditionally land disposed their pesticide wastes. Subsequent to promulgation of today's proposed rule, these generators must comply with the requirements of the land disposal restrictions if they dispose a hazardous waste subject to treatment standards or "soft hammer" provisions.

F. Regulatory Overlap of Polychlorinated Biphenyls (PCBs) Under the Toxic Substance Control Act (TSCA) and RCRA.

Certain wastes listed as P and U contain PCBs. The PCB component of such a waste mixture is regulated primarily under TSCA, whereas the listed P or U component of the waste is regulated under RCRA. Such a mixture of listed/PCB waste must meet the applicable requirements under both statutes. Such a waste must go to an incinerator permitted under both TSCA and RCRA. Any ash residual from incineration must meet the treatment standard for the listed waste component prior to land disposal.

VI. Regulatory Requirements

A. Regulatory Impact Analysis

1. Purpose

The Agency estimated the costs, benefits, and economic impacts of today's proposed rule to determine if it is a "major" regulation as defined by Executive Order No. 12291. For all major rules, the Agency is required by the Executive Order to conduct a Regulatory Impact Analysis, and by the Regulatory Flexibility Act to assess small business impacts. The cost and economic impact estimates serve, additionally, as measures of the practical capability of facilities to comply with the proposed rule.

The results indicate that today's proposed rule is not a major rule. This section of the preamble discusses the results of the analyses of the proposed rule.

2. Executive Order No. 12291

Executive Order No. 12291 requires EPA to assess the effect of proposed Agency actions and alternatives during the development of regulations. Such an assessment consists of a quantification of the potential benefits and costs of the rule, as well as a description of any beneficial or adverse effects that cannot be quantified in monetary terms. In addition, Executive Order No. 12291 requires that regulatory agencies prepare a Regulatory Impact Analysis (RIA) for major rules. Major rules are defined as those likely to result in:

- An annual cost to the economy of $100 million or more; or
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, employment, investment, innovation, or international trade.

The Agency has conducted cost analysis and has concluded that the proposed rule is not a major rule. Annual costs to the economy are estimated at approximately $24.9 million to $32.4 million for wastes not injected underground and an additional $3.9 million for those injected underground.

3. Basic Approach

The Agency analyzed costs and benefits using the same approach and methodology that was used for the August 17, 1988 First Third final rule (53 FR 31138). The effects of the proposed rule were estimated by comparing post-regulatory costs, benefits, and economic impacts with those resulting under baseline conditions. The baseline for all Second and Third Third wastes is defined as continued land disposal of wastes in units meeting minimum technological requirements. The baseline was not adjusted to reflect treatment requirements that would automatically occur in the absence of a rule after May 8, 1990.

The baseline for First Third wastes included in this rule is defined as treatment needed to comply with the First Third Land Disposal Restrictions rule or the soft hammer provisions that went into effect on August 8, 1988. This baseline corresponds to treatments evaluated under Alternative A Scenario 2 in the First Thirds RIA (53 FR 31138, August 17, 1988).

4. Results

a. Population and Affected Facilities. The proposed rule will affect 27 facilities. An additional 8 facilities would be affected by the soft hammer provisions that will take effect on June 8, 1989.

Only 20 injection facilities (with a total of 27 injection wells) will be required to either treat wastes or file "no migration" petitions. These facilities will not significantly contribute to compliance costs already incurred by injection well owners/operators managing California list and First Third wastes.

b. Costs. The standards promulgated by this proposed rule are estimated to cost industry $28.8 million per year. If there is not enough capacity to treat the wastes subject to the soft hammer provisions, the facilities may be able to continue managing their wastes in minimum technology units at no additional cost.

If treatment capacity is available, wastes subject to the soft hammer provisions would need to be treated. The Agency estimated the upper range costs of treating those wastes by assuming these wastes would be incinerated. This treatment could add as much as $7.5 million to the cost of the rule. Less costly forms of treatment would be available for the soft hammered wastes, which would reduce the cost.

In general, the Agency assumed that the least costly treatment would be selected. This assumption had negligible effects on the estimated costs except for the case of a mixed waste stream containing K027 and D007, a Third Third chromium waste. The Agency assumed that the mixed waste would be treated to comply with the proposed rule. The Agency also assumed that no treatment of the residual scrubber sludges to remove chromium would take place because treatment standards for D007 have not been promulgated. Promulgation of standards for D007 under the Third Third rule would increase costs for this mixed waste by approximately $28 million.

The additional volume of injected wastes attributable to the Second Third schedule is small by comparison to the volumes of wastes regulated by previous California list and First Third rulemakings. The Agency performed an analysis to assess the economic effect of associated compliance costs for Second Third wastes and found total compliance costs to be $3.9 million annually and petition costs are estimated at $0.1 million annually.

c. Economic Impacts. The economic impact analysis estimates that none of the affected facilities would be significantly affected by the proposed rule. None of the affected facilities is expected to close as a result of the rule.

d. Benefits. The benefits analysis estimated that the proposed rule would reduce the number of cancer cases by 0.07 and the number of exposures to noncarcinogenic chemicals above threshold levels by 555.

Benefits other than reduction in human health risk—such as resource damage avoided and corrective action costs avoided—were not quantified. As a result, the benefits of the land disposal restrictions for Second Third wastes are likely to be understated.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a notice of rulemaking for a proposed rule, it must prepare and make available for public comment a Regulatory Flexibility Analysis (RFA) that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the Agency's Administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities.

According to EPA's guidelines for conducting an RFA, if over 20 percent of the population of small businesses, small organizations, or small government jurisdictions is likely to experience financial distress based on the costs of the rule, then the agency is required to consider that the rule will have a significant effect on a substantial number of small entities and to perform a formal RFA. EPA evaluated the economic effect of the proposed rule, as required by the Regulatory Flexibility Act, and determined that no facilities would be significantly affected. The Administrator certifies that Part 268 and Part 148 will not have significant

economic effects on a substantial number of small entities. As a result of this finding, the Agency has not prepared a formal RFA.

C. Paperwork Reduction Act

All information collection requirements in this proposed rule were promulgated in previous land disposal restrictions rulemakings (other than those for the Underground Injection Control Program) and approved by the Office of Management and Budget at that time. Since there are no new information collection requirements being proposed today, an Information Collection Request has not been prepared.

For the Underground Injection Control Program, 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.* Reporting and recordkeeping burden on the public for this collection is estimated at 745 hours for the respondents, with an average of 14 hours per response. These burden estimates include all aspects of the collection effort and may include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

If you wish to submit comments regarding any aspect of this collection of information, including suggestions for reducing the burden, or if you would like a copy of the information collection request (please reference ICR No. 370.09), contact Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 Street, SW., Washington, DC 20460 (202-382-2745); and Office of Management and Budget (Attn. Desk Officer, EPA), Paperwork Reduction Project (ICR No. 370.09), Washington, DC 20503. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Review of Supporting Documents

The primary source of information on current land disposal practices and industries affected by this rule was EPA's 1986 "National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (the TSDR Survey). The average quantity of waste contributed by generator facilities was obtained from EPA's "National Survey of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities Regulated under RCRA in 1981" (April 1984).

VII. Implementation of the Land Disposal Restrictions Program

The generator or owner/operator of a treatment, storage, and disposal facility must follow the waste management procedures specified in 40 CFR Part 268 which are applicable to the restricted hazardous wastes subject to the provisions in today's proposal. These wastes are listed in Subpart C of Part 268. The corresponding treatment standards and effective dates are found in Part 268 Subpart D. After the applicable effective date, a generator of a waste must determine, at the point of initial generation, if the waste meets the treatment standard. This determination can be made based on knowledge or analysis of the hazardous constituents in the waste, in the treatment residual, or in an extract of the waste or treatment residual. Waste analysis data and data supporting the generator's knowledge of the waste must be kept in the generator's files for five years.

A waste which meets the treatment standard or is the subject of a national variance, case-by-case extension, or "no migration" exemption can be land disposed. If the waste is subject to a national capacity variance or a case-by-case extension and is disposed in a landfill or surface impoundment, the disposal unit must meet the minimum technological requirements of RCRA 3005(o). The generator must satisfy the notification and certification requirements of 40 CFR 268.7(a) (2) and (3). The land disposal facility is required by 40 CFR 268.7(c) to keep a record of the notice and certification and verify that the treatment standard was met by testing according to the frequency specified in the facility's waste analysis plan.

A waste which does not naturally meet the treatment standard can be land disposed after treatment to meet the treatment standard. The generator must notify the treatment facility in accordance with 40 CFR 268.7(a)(1). The treatment facility must maintain a record of the notification and test the treated wastes according to the frequency specified in the facility's waste analysis plan. For treated wastes which meet the standard the treatment facility must provide the notice and certification required under 40 CFR 268.7(b) (1) and (2) to the land disposal facility. For treated wastes which do not meet the standard the treatment facility must comply with the notice requirements of 40 CFR 268.7(a)(1) if the waste will be managed at a different treatment facility.

VIII. Request for Data on Stabilization of Organic Constituents

The Agency is soliciting data showing the performance of stabilization technologies on organic waste constituents. These data should describe the treatment method and any relevant parameters, describe the feed and post-treatment concentrations of constituents (the BDAT list of constituents may be useful), describe the analytical methods used, and include appropriate QA/QC data. This data is being gathered for possible future use by the Agency. This is intended to give the regulated community an opportunity to provide data that may be used by EPA for future decisions on the viability of stabilization as a treatment alternative for organic wastes. Please identify these comments with the heading "Comments on Stabilization of Organics".

IX. References

(1) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for Cyanide Wastes. F006 (Cyanide Only), F007-F012, F019, P012, P013, P021, P029, P030, P033, P063, P074, P098, P099, P104, P106, and P121, U246. December 1988.

(2) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for K011, K013, and K014. December 1988.

(3) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for K009 and K010. December 1988.

(4) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for K043. December 1988.

(5) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for Phthalate Waste, K023, K093, K094, U028, U069, U088, U102, U107, U190. December 1988.

(6) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for Organophosphourous Waste, K038-K040, P039, P040, P041, P043, P044, P062, P071, P085, P089, P094, P097, P109, P111, U059, U087, and U235. December 1988.

(7) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for Inorganic Pigment Waste, K002, K003, K005, K006, and K007. December 1988.

(8) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for K028. December 1988.

(9) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for F024. December 1988.

(10) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for Waste from the Production of Dinitrotoluene, Toluenediamine, and Toluenediisocyanate, K027, K111-K116. December 1988.

(11) U.S. EPA, "Treatment Technology Background Document." December 1988.

(12) U.S. EPA, "Methodology for Developing Treatment Standards." December 1988.

(13) U.S. EPA, Memorandum From Ralph Braceio, Jean Tulley to William Vocke "Results of Preliminary Analysis of Proposed

Second Thirds Land Disposal Restrictions Rule December 19, 1988.

(14) U.S. EPA, "Background document for Second Third Wastes to Support 40 CFR 268 Land Disposal Restrictions Proposed Rule. Second Third Wastes Volumes, Characteristics, and Required and Available Treatment Capacity " December 1988.

(15) U.S. EPA, "Findings on Class I Hazardous Wells Affected by the Land Ban Rule." Temple, Barker and Sloane. December 1987.

(16) U.S. EPA, "Estimated Quantity of Extracted Ground Water—RCRA Facilities and CERCLA Sites; 1988–1990," ICF Incorporated. July 1988.

(17) U.S. EPA, "Evaluation of Availability of Alternate Treatment and Disposal Capacity for Injected Hazardous Wastes;" Tischler and Kocurek. October 1987.

(18) U.S. EPA, "Information Collection Request for the Proposed Hazardous Waste Disposal Restrictions for Class I Injection of Second Thirds List Wastes," Cadmus Group, Inc. November 1988.

(19) U.S. EPA, "Second and Third Thirds Cost Estimate," Cadmus Group, Inc. December 1988.

List of Subjects in 40 CFR Part 148, 268, and 271

Administrative practice and procedure, confidential business information, Environmental protection, Hazardous materials, Hazardous materials transportation, Hazardous waste, Imports, Indian lands, Insurance, Intergovernmental relations, Labeling, Packaging and containers, Penalties, Recycling, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal, Water pollution control, Water supply.

John Moore,

Acting Administrator.

Date: December 30, 1988.

For the reasons set out in the preamble, Title 40, Chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

I. In Part 148:

1. The authority citation for Part 148 continues to read as follows:

Authority: Section 3004, Resources Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*

2. Section 148.14 which was proposed to be revised at 53 FR 43408, Oct. 26, 1988, would be further amended by redesignating proposed paragraphs (a) as paragraph (c), (b) as (d), and (c) as (e); by revising the introductory text of redesignated paragraph (e); and by adding new paragraphs (a) and (b) to read as follows:

§ 148.14 Waste specific prohibitions—First Third wastes.

(a) Effective June 8, 1989, the wastes specified in 40 CFR 261.31 as EPA Hazardous Waste codes F006 (cyanide), F008, F009, F019; the wastes specified in 40 CFR 261.32 as K004 (nonwastewater), K036 (wastewaters); and the wastes specified in 40 CFR 261.33 as P030, P039, P041, P063, P071, P089, P094, P097, U221 and U223 are prohibited from underground injection.

(b) Effective August 8, 1990, the wastes specified in 40 CFR 261.31 as EPA Hazardous waste code F007; and the wastes specified in 40 CFR 261.32 as K011, K013, K014 are prohibited from underground injection.

* * * * *

(e) The requirements of paragraphs (a), (b), (c), and (d) of this section do not apply:

* * * * *

3. Section 148.15 is added to read as follows:

§ 148.15 Waste specific prohibitions—Second Third wastes.

(a) Effective June 8, 1989, the waste specified in 40 CFR 261.31 as EPA Hazardous waste codes F010, F011, F012, F024; the wastes specified in 40 CFR 261.32 as K027, K028, K029 (nonwastewaters), K038, K039, K040, K043, K095 (nonwastewaters), K096 (nonwastewaters), K113, K114, K115, K116; and wastes specified in 40 CFR 261.33 as P029, P040, P043, P044, P062, P074, P085, P098, P104, P106, P111, U028, U058, U107 and U235; are prohibited from underground injection.

(b) Effective June 8, 1991, the wastes specified in 40 CFR 261.32 as EPA hazardous waste codes K009 and K010 are prohibited from underground injection.

(c) The requirements of paragraph (a) and (b) of this section do not apply:

(1) If the wastes meet or are treated to meet the applicable standards specified in Subpart D of Part 268; or

(2) If an exemption from a prohibition has been granted in response to a petition under Subpart C of this part; or

(3) During the period of extension of the applicable effective date, if an extension is granted under § 148.4 of this part.

4. Section 148.16 is added to read as follows:

§ 148.16 Waste specific prohibitions—Third Third wastes.

(a) Effective June 8, 1989, the wastes specified in 40 CFR 261.32 as EPA hazardous waste codes K002 (nonwastewaters), K003 (nonwastewaters), K005 (nonwastewaters), K006 (nonwastewaters), K007 (nonwastewaters), K023, K093, K094; and the wastes specified in 40 CFR 261.33 as P013, P021, P099, P109, P121, U069, U087, U088, U102, U190; are prohibited from underground injection.

(b) The requirements of paragraph (a) of this section do not apply:

(1) If the wastes meet or are treated to meet the applicable standards specified in Subpart D of Part 268; or

(2) If an exemption from a prohibition has been granted in response to a petition under Subpart C of this part.

PART 268—LAND DISPOSAL RESTRICTIONS

I. In Part 268:

1. The authority citation for Part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

2. Section 268.12 is amended by revising paragraphs (b), (c) and (d) to read as follows:

§ 268.12 Indentification of wastes to be evaluated by May 8, 1990.

* * * * *

(b) Wastewater residues (less than 1% total organic carbon and less than 1% total suspended solids) resulting from the following well-designed and well-operated treatment methods for wastes listed in §§ 268.10 and 268.11 for which EPA has not promulgated wastewater treatment standards: metals recovery, metals precipitation, cyanide destruction, carbon adsorption, chemical oxidation, steam stripping, biodegradation, and incineration or other direct thermal destruction. The treatment standards applicable to wastes prohibited under §§ 268.30–268.33 of this Part still apply.

(c) Leachate derived from the treatment, storage or disposal of wastes listed in §§ 268.10 and 268.11 for which EPA has not promulgated wastewater treatment standards, and contaminated ground water that contains such wastes. The treatment standards applicable to wastes prohibited under §§ 268.30–268.33 of this part still apply.

(d) Wastes listed in §§ 268.10 and 268.11 that are mixed hazardous/radioactive wastes. The treatment standards applicable to wastes prohibited under §§ 268.30–268.32 of this Part still apply.

Subpart C—Prohibitions on Land Disposal

3. Section 268.34 is added to read as follows:

§ 268.34 Waste specific prohibitions—Second Third Wastes.

(a) Effective June 8, 1989, the following First Third wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Nos. F006 (cyanide), F007 which are not underground injected; F008, F009, F019; the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Nos. K004, K008; K011, K013 and K014 which are not underground injected; K036; and the wastes specified in 40 CFR 261.33 as EPA Hazardous Waste Nos. P030, P039, P041, P063, P071, P089, P094, P097, U221 and U223 are prohibited from land disposal.

(b) Effective June 8, 1989, the following Second Third wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Nos. F010, F011, F012, F024; the wastes specified in 40 CFR 261.32 as K009 and K010 which are not underground injected; K027, K028, K029, K002 (nonwastewaters), K003 (nonwastewaters), K005 (nonwastewaters), K006 (nonwastewaters), K007 (nonwastewaters), K009, K010, K023, K027, K029 (nonwastewaters), K038, K039, K040, K043, K093, K094, K095 (nonwastewaters), K096 (nonwastewaters), K113, K114, K115, K116; and the wastes specified in 40 CFR 261.33 as EPA Hazardous Waste Nos. P013, P021, P029, P030, P039, P040, P041, P043, P044, P062, P071, P074, P085, P089, P094, P097, P098, P099, P104, P106, P109, P111, P121, U028, U058, U069, U087, U088, U102, U107, U190, U221, U223, and U235 are prohibited from land disposal.

(c) Effective June 8, 1991, the wastes specified in 40 CFR 268.11 having a treatment standard in Subpart D of this part based on incineration and which are contaminated soil and debris are prohibited from land disposal.

(d) Between June 8, 1989 and June 8, 1991, wastes included in paragraph (b) of this section may be disposed of in a landfill or surface impoundment unit only if such unit is in compliance with the requirements specified in 268.5(h)(2).

(e) The requirements of paragraphs (a), (b), and (c) of this section do not apply if:

(1) The wastes meet the applicable standards specified in Subpart D of this Part; or

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition; or

(3) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to those wastes covered by the extension.

(f) Between June 8, 1989 and May 8, 1990, the wastes specified in § 268.11 for which treatment standards under Subpart D of this Part are not applicable, including wastes which are subject to the statutory prohibitions of RCRA section 3004(d) or codified prohibitions under § 268.32 of this Part, but not including wastes subject to a treatment standard under § 268.42 of this Part, are prohibited from disposal in a landfill or surface impoundment unless the wastes are the subject of a valid demonstration and certification pursuant to § 268.8.

(g) To determine whether a hazardous waste listed in §§ 268.10, 268.11, and 268.12 exceeds the applicable treatment standards specified in §§ 268.41 and 268.43, the initial generator must test a representative sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable Subpart D levels, the waste is prohibited from land disposal and all requirements of Part 268 are applicable, except as otherwise specified.

Subpart D—Treatment Standards

4. In § 268.41, Table CCWE is amended by deleting from the subtable for F006 nonwastewaters "Cyanides (Total) * * * Reserved", and by adding the following subtables to Table CCWE in alphabetical/numerical order by EPA Hazardous Waste Number:

§ 268.41 Treatment standards expressed as concentrations in waste extract.

(a) * * *

TABLE CCWE—CONSTITUENT CONCENTRATIONS IN WASTE EXTRACT

* * * * *	
F007, F008, F009, and F011 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Cadmium	0.066
Chromium (Total)	5.2
Lead	0.51
Nickel	0.32
Silver	0.072
* * * * *	
F012 and F019 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Cadmium	0.066
Chromium (Total)	5.2
Lead	0.51
Nickel	0.32
Silver	0.072

TABLE CCWE—CONSTITUENT CONCENTRATIONS IN WASTE EXTRACT—Continued

* * * * *	
F024 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Chromium (Total)	1.7
Nickel	0.048
* * * * *	
K011, K013, and K014 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Nickel	0.32
* * * * *	
K028 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Chromium (Total)	1.7
Nickel	0.048
* * * * *	
K115 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Nickel	0.32
* * * * *	
P029 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Copper	0.71
* * * * *	
P074 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Nickel	0.3
* * * * *	
P099 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Silver	0.07
* * * * *	
P104 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Silver	0.07
* * * * *	
P121 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Zinc	0.086

5. In § 268.42, paragraphs (a)(3) and (a)(4) are added to read as follows:

§ 268.42 Treatment standards expressed as specified technologies

(a) * * *

(3) the nonwastewater form of the following hazardous wastes listed in §§ 268.10, 268.11, and 268.12 must be incinerated in accordance with the requirements of Part 264, Subpart O, or Part 265, Subpart O, or in boilers or industrial furnaces burning in accordance with applicable regulatory standards: K027, K039, K113, K114, K115,

K116, P040, P041, P043, P044, P062, P085, P109, P111, U058, U087, U221, and U223.

(4) The wastewater form of the following hazardous wastes listed in §§ 268.10, 268.11, and 268.12 must be treated by carbon adsorption: K027, K039, K113, K114, K115, K116, P040, P041, P043, P044, P062, P085, P109, P111, U058, U087, U221, and U223.

* * * * *

6. In § 268.43, Table CCW is amended by revising the subtable for F006 nonwastewaters, and by adding the following subtables in alphabetical/numerical order by EPA hazardous waste number to read as follows:

§ 268.43 Treatment standards expressed as waste concentrations.

(a) * * *

TABLE CCW—CONSTITUENT CONCENTRATIONS IN WASTES

F006 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Cyanides (Total)	110
Cyanides (Amenable)	0.064

* * * * *

F006 wastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/l)
Cyanides (Total)	12
Cyanides (Amenable)	1.3

* * * * *

F007, F008, F009, and F011 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Cyanides (Total)	110
Cyanides (Amenable)	0.064

* * * * *

F007, F008, F009, and F011 wastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/l)
Cyanides (Total)	12
Cyanides (Amenable)	1.3
Chromium (Total)	0.32
Lead	0.04
Nickel	0.44

* * * * *

F010 nonwastewaters	Concentration (in mg/kg)
Cyanides (Total)	1.5

* * * * *

F010 wastewaters	Concentration (in mg/l)
Cyanides (Total)	12
Cyanides (Amenable)	1.3

* * * * *

F012 an F019 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Cyanides (Total)	110
Cyanides (Amenable)	0.064

TABLE CCW—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

* * * * *

F012 and F019 wastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/l)
Cyanides (Total)	12
Cyanides (Amenable)	1.3
Chromium (Total)	0.32
Lead	0.04
Nickel	0.44

* * * * *

F024 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
2-Chloro-1,3-butadiene	0.014
3-Chloropropene	0.014
1,1-Dichloroethane	0.014
1,2-Dichloroethane	0.014
1,2-Dichloropropane	0.014
cis-1,3-Dichloropropene	0.014
trans-1,3-Dichloropropene	0.014
Bis(2-ethylhexyl)phthalate	1.8
Di-n-octyl phthalate	1.8
Hexachloroethane	1.8
Hexachlorodibenzo-furans	0.001
Hexachlorodibenzo-p-dioxins	0.001
Pentachlorodibenzo-furans	0.001
Pentachlorodibenzo-p-dioxins	0.001
Tetrachlorodibenzo-furans	0.001

* * * * *

F024 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/l)
2-Chloro-1,3-butadiene	0.28
3-Chloropropene	0.28
1,1-Dichloroethane	0.014
1,2-Dichloroethane	0.014
1,2-Dichloropropane	0.014
cis-1,3-Dichloropropene	0.014
trans-1,3-Dichloropropene	0.014
Bis(2-ethylhexyl)phthalate	0.036
Di-n-octyl phthalate	0.036
Hexachloroethane	0.036
Hexachlorodibenzo-furans	0.001
Hexachlorodibenzo-p-dioxins	0.001
Pentachlorodibenzo-furans	0.001
Pentachlorodibenzo-p-dioxins	0.001
Tetrachlorodibenzo-furans	0.001
Chromium (Total)	0.35
Nickel	0.47

* * * * *

K009 and K010 nonwastewaters	Concentration (in mg/kg)
Chloroform	6.0
1,1-Dichloroethane	6.0
Methylene chloride	30

* * * * *

K009 and K010 wastewaters	Concentration (in mg/l)
Acrolein	0.14
Chloroform	0.09
1,1-Dichloroethane	5.3
Ethyl methacrylate	0.18
Methylene chloride	0.03

* * * * *

K011, K013, and K014 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Acetonitrile	1.8
Acrylonitrile	1.4

TABLE CCW—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Acrylamide	23
Benzene	0.03
Cyanides (Total)	57

* * * * *

K011, K013, and K014 wastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/l)
Acetonitrile	0.14
Acrylonitrile	0.14
Acrylamide	0.14
Benzene	0.14
Cyanides (Total)	12
Cyanides (Amenable)	1.3
Nickel	0.44

* * * * *

K023, K093, and K094 nonwastewaters	Concentration (in/mg/kg)
Phthalic acid	28

* * * * *

K023, K093, and K094 wastewaters	Concentration (in mg/l)
Phthalic acid	0.54

* * * * *

K028 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
1,1-Dichloroethane	0.014
trans-1,2-Dichloroethene	0.014
Hexachlorobutadiene	2.7
Hexachloroethane	1.8
Pentachloroethane	1.9
1,1,1,2-Tetrachloroethane	1.9
1,1,2,2-Tetrachloroethane	1.9
Tetrachloroethene	0.014
1,1,1-Trichloroethane	0.014
1,1,2-Trichloroethane	0.014

* * * * *

K028 wastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/l)
1,1-Dichloroethane	0.014
trans-1,2-Dichloroethene	0.036
Hexachlorobutadiene	0.014
Hexachloroethane	0.036
Pentachloroethane	0.014
1,1,1,2-Tetrachloroethane	0.014
1,1,2,2-Tetrachloroethane	0.014
Tetrachloroethene	0.014
1,1,1-Trichloroethane	0.014
1,1,2-Trichloroethane	0.014
Cadmium	6.4
Chromium (Total)	0.35
Lead	0.037
Nickel	0.47

* * * * *

K036 wastewaters	Concentration (in mg/l)
Disulfoton	0.003

* * * * *

K038 and K040 nonwastewaters	Concentration (in mg/kg)
Phorate	0.1

* * * * *

TABLE CCW—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

K038 and K040 wastewaters	Concentration (in mg/l)
Phorate	0.003

* * * * *

K043 nonwastewaters	Concentration (in mg/kg)
2,4-Dichorophenol	0.38
2,6-Dichorophenol	0.34
Pentachlorophenol	1.9
Tetrachloroethene	1.7
Tetrachlorophenols (Total)	0.68
2,4,5-Trichlorophenol	8.2
2,4,6-Trichlorophenol	7.6
Hexachlorodibenzo-p-dioxins	0.001
Hexachlorodibenzo-furans	0.001
Pentachlorodibenzo-p-dioxins	0.001
Pentachlorodibenzo-furans	0.001
Tetrachlorodibenzo-p-dioxins	0.001
Tetrachlorodibenzo-furans	0.001

* * * * *

K043 wastewaters	Concentration (in mg/l)
2,4-Dichlorophenol	0.06
2,6-Dichlorophenol	0.006
Pentachlorophenol	0.014
Tetrachloroethene	0.006
Tetracholorophenols (Total)	0.02
2,4,5-Trichlorophenol	0.025
2,4,6-Trichlorophenol	0.017
Hexachlorodibenzo-p-dioxins	0.001
Hexachlorodibenzo-furans	0.001
Pentachlorodibenzo-p-dioxins	0.001
Pentachlorodibenzo-furans	0.001
Tetrachlorodibenzo-p-dioxins	0.001
Tetrachlorodibenzo-furans	0.001

* * * * *

K115 wastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/l)
Nickel	0.47

* * * * *

P013 nonwastewaters	Concentration (in mg/kg)
Cyanide (Total)	110
Cyanide (Amenable)	0.064

* * * * *

P013 wastewaters	Concentration (in mg/l)
Cyanide (Total)	12
Cyanide (Amenable)	1.3

* * * * *

P021 nonwastewaters	Concentration (in mg/kg)
Cyanide (Total)	110
Cyanide (Amenable)	0.064

* * * * *

P021 wastewaters	Concentration (in mg/l)
Cyanide (Total)	12
Cyanide (Amenable)	1.3

TABLE CCW—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

* * * * *

P029 nonwastewaters	Concentration (in mg/kg)
Cyanide (Total)	110
Cyanide (Amenable)	0.064

* * * * *

P029 wastewaters	Concentration (in mg/l)
Cyanide (Total)	12
Cyanide (Amenable)	1.3
Copper	0.42

* * * * *

P030 nonwastewaters	Concentration (in mg/kg)
Cyanide (Total)	110
Cyanide (Amenable)	0.064

* * * * *

P030 wastewaters	Concentration (in mg/l)
Cyanide (Total)	12
Cyanide (Amenable)	1.3

* * * * *

P039 nonwastewaters	Concentration (in mg/kg)
Disulfoton	0.1

* * * * *

P039 wastewaters	Concentration (in mg/l)
Disulfoton	0.003

* * * * *

P063 nonwastewaters	Concentration (in mg/kg)
Cyanide (Total)	110
Cyanide (Amenable)	0.064

* * * * *

P063 wastewaters	Concentration (in mg/l)
Cyanide (Total)	12
Cyanide (Amenable)	1.3

* * * * *

P071 nonwastewaters	Concentration (in mg/kg)
Methyl parathion	0.1

* * * * *

P071 wastewaters	Concentration (in mg/l)
Methyl parathion	0.003

* * * * *

P074 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Cyanide (Total)	110
Cyanide (Amenable)	0.064

TABLE CCW—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

* * * * *

P074 wastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/l)
Cyanide (Total)	12
Cyanide (Amenable)	1.3
Nickel	0.44

* * * * *

P089 nonwastewaters	Concentration (in mg/kg)
Parathion	0.1

* * * * *

P089 nonwastewaters	Concentration (in mg/l)
Parathion	0.003

* * * * *

P094 nonwastewaters	Concentration (in mg/kg)
Phorate	0.1

* * * * *

P094 wastewaters	Concentration (in mg/l)
Phorate	0.003

* * * * *

P097 nonwastewaters	Concentration (in mg/kg)
Famphur	0.1

* * * * *

P097 wastewaters	Concentration (in mg/l)
Famphur	0.003

* * * * *

P098 nonwastewaters	Concentration (in mg/kg)
Cyanide (Total)	110
Cyanide (Amenable)	0.064

* * * * *

P098 nonwastewaters	Concentration (in mg/l)
Cyanide (Total)	112
Cyanide (Amenable)	1.3

* * * * *

P099 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Cyanide (Total)	110
Cyanide (Amenable)	0.064

* * * * *

P099 wastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/l)
Cyanide (Total)	112
Cyanide (Amenable)	1.3
Silver (1)	

* * * * *

TABLE CCW—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

P104 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Cyanide (Total)	110
Cyanide (Amenable)	0.064

* * * * *

P104 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/l)
Cyanide (Total)	12
Cyanide (Amenable)	1.3
Silver	(1)

* * * * *

P106 nonwastewaters	Concentration (in mg/kg)
Cyanide (Total)	110
Cyanide (Amenable)	0.064

* * * * *

P106 wastewaters	Concentration (in mg/l)
Cyanide (Total)	12
Cyanide (Amenable)	1.3

* * * * *

P121 nonwastewaters	Concentration (in mg/kg)
Cyanide (Total)	110
Cyanide (Amenable)	0.064

* * * * *

P121 wastewaters	Concentration (in mg/l)
Cyanide (Total)	12
Cyanide (Amenable)	1.3
Zinc	(1)

* * * * *

U028 nonwastewaters	Concentration (in mg/kg)
Bis-(2-ethylhexyl) phthalate	28

TABLE CCW—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

* * * * *

U028 wastewaters	Concentration (in mg/l)
Bis-(2-ethylhexyl) phthalate	0.54

* * * * *

U069 nonwastewaters	Concentration (in mg/kg)
Di-n-butyl phthalate	28

* * * * *

U069 wastewaters	Concentration (in mg/l)
Di-n-butyl phthalate	0.54

* * * * *

U088 nonwastewaters	Concentration (in mg/kg)
Diethyl phthalate	28

* * * * *

U088 wastewaters	Concentration (in mg/l)
Diethyl phthalate	0.54

* * * * *

U102 nonwastewaters	Concentration (in mg/kg)
Dimethyl phthalate	28

* * * * *

U102 wastewaters	Concentration (in mg/l)
Dimethyl phthalate	0.54

* * * * *

U107 nonwastewaters	Concentration (in mg/kg)
Di-n-octyl phthalate	28

TABLE CCW—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

* * * * *

U107 wastewaters	Concentration (in mg/l)
Di-n-octyl phthalate	0.54

* * * * *

U190 nonwastewaters	Concentration (in mg/kg)
Phthalic anhydride (reported as Phthalic acid).	28

* * * * *

U190 wastewaters	Concentration (in mg/l)
Phthalic anhydride (reported as Phthalic acid).	0.54

* * * * *

U235 nonwastewaters	Concentration (in mg/kg)
tris-(2,3-Dibromopropyl) phosphate.	0.1

* * * * *

U235 wastewaters	Concentration (in mg/l)
tris-(2,3-Dibromopropyl) phosphate.	0.003

[1] Reserved.

No Land Disposal for:

K002—Nonwastewaters [Based on Recycling]

K003—Nonwastewaters [Based on Recycling]

K004—Nonwastewaters [Based on Recycling]

K005—Nonwastewaters [Based on No Generation]

K006—Nonwastewaters [Based on Recycling]

K007—Nonwastewaters [Based on No Generation]
K008—Nonwastewaters [Based on Recycling]
K029—Nonwastewaters [Based on No Generation]
K095—Nonwastewaters [Based on Recycling]
K096—Nonwastewaters [Based on Recycling]
* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

II. In Part 271:

1. The authority citation for Part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

Subpart A—Requirements for Final Authorization

2. § 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication in the **Federal Register**:

§ 271.1 [Amended]

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date	Title of regulation	FR reference	Effective date
* *	* *	* *	*
[Insert date of final rule]	Land disposal restrictions for Second Third wastes.	[Insert FR reference]	June 8, 1989.
* *	* *	* *	*

3. Section 271.1(j) is amended by adding the date of publication and the **Federal Register** page numbers to the following entry in Table 2.

(j) * * *

* * * * *

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective	Self-implementing provision	RCRA citation	**Federal Register** reference
* *	* *	* *	*
June 8, 1989	Land disposal restrictions on ⅔ of scheduled wastes.	3004(g)(6)(A)	[Insert date of publications and page numbers].
* *	* *	* *	*

[FR Doc. 89-296 Filed 1-10-89; 8:45 am]
BILLING CODE 6560-50-M

federal register

Wednesday
January 11, 1989

Part III

Environmental Protection Agency

40 CFR Parts 166 and 168

Advertising of Unregistered Pesticides, Unregistered Uses of Registered Pesticides and FIFRA Section 24(c) Registrations; Final Interpretive Rule

ENVIRONMENTAL PROTECTION AGENCY

[OPP-120003A; FRL 3384-6]

40 CFR Parts 166 and 168

Advertising of Unregistered Pesticides, Unregistered Uses of Registered Pesticides and FIFRA Section 24(c) Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Interpretive Rule.

SUMMARY: EPA regulates the distribution, sale, and offer for sale of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 *et seq.* (FIFRA). EPA will treat as unlawful under FIFRA section 12 the advertising of: (1) Any pesticide for a use authorized under a FIFRA section 5 experimental use permit; (2) any pesticide for a use authorized under a FIFRA section 18 emergency exemption, except for advertisements that are targeted to the geographical areas covered by the exemption, that identify retail dealers who stock the product, and that state the limitations on the use authorized under the exemption; (3) any pesticide for a use authorized by a FIFRA section 24(c) special local need registration without a prominent notice of the limitations on use under the section 24(c) registration; (4) any other unregistered pesticide; or (5) any registered pesticide for any other use not permitted by its registration under FIFRA section 3 or 24(c). This regulation is being promulgated because of numerous instances of pesticide advertising that EPA believes to be false or misleading.

EFFECTIVE DATE: This rule will become effective March 13, 1989.

FOR FURTHER INFORMATION CONTACT:

By mail: Franklin D. Gee, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460,

Office location and telephone number: Rm. 1120B, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-0592).

SUPPLEMENTARY INFORMATION:

I. Background

EPA issued a proposed rule on July 3, 1986 (51 FR 24393) stating how the Agency proposed to interpret FIFRA with regard to advertisements concerning uses of pesticides not permitted by registrations issued under FIFRA section 3, including uses allowed by FIFRA section 5 experimental use permits or FIFRA section 18 emergency exemptions, uses of unregistered pesticides, use of a registered pesticide for any other unapproved use, and uses that are the subject of registrations under FIFRA section 24(c). The rationale for the proposed rule was given in the preamble to that proposal. Except as modified by this document, the reasoning set forth in that preamble applies to the final rule adopted today.

The proposed rule was published in the **Federal Register** under 40 CFR Parts 153 and 166. However, since Part 153 pertains to general statements of policy and interpretations under FIFRA, the provisions that proposed to add Subpart A, § 153.12 to Part 153 have been moved to new Part 168, Subpart B, § 168.22 in this final rule. EPA intends to place enforcement policies in this new Part 168.

In this preamble, the part and section numbers as proposed (Part 153, § 153.12) are used in the discussion of the comments. There have been no numbering changes to the Part 166 amendment.

II. Response to Comments

Comments on the proposed rule were received from nine organizations. The comments are available for public inspection at the Office of Pesticide Programs Reading Room, Rm. 236, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:00 a.m. to 4:00 p.m., Monday through Friday except legal holidays. The comments and Agency responses are discussed in Units II.A. through H.

A. Experimental Use Permits (EUP)

One commenter endorsed the Agency's proposal to treat as unlawful any advertising of a pesticide for an EUP use. However, another commenter favored allowing advertising for an EUP use if the advertisement states that use must be in accordance with the conditions of the EUP. This commenter also said that EPA Policy and Criteria Notice No. 2162.3 (1981) conceded that advertisements of experimental use permit pesticides are not unlawful.

The Agency disagrees with the comment that favored allowing advertising of an EUP. As stated in the preamble to the proposed rule, under agency regulations an application for an EUP must specifically identify participants, location of participants, and acreage involved prior to approval. Advertisement of EUPs thus serves no useful purpose, but could encourage the sale or use of a pesticide for an unauthorized use.

Policy and Criteria Notice No. 2162.3 (1981) was rescinded recently. That Notice did not "concede that advertisements of experimental use permit pesticides are not unlawful." The Notice said the following: (1) It is unlawful to advertise a use covered by an EUP if the product has any registered uses; (2) advertisements for products that have not yet been registered will not be the subject of enforcement action if the products are not available for sale; (3) ads that do not refer to the experimental use status of [unregistered and unavailable] products are not unlawful, but are discouraged as potentially misleading; and (4) advertisements for EUP products should be qualified.

The Agency's experience over the past six years indicates the need for changes in those interpretations. Thus, this rule sets forth EPA's current views.

One commenter expressed concern about the purported broadness of the Agency's interpretation regarding EUP uses. The commenter apparently thought that EPA meant to treat as unlawful the use of product testimonials from EUP participants in advertising that appears after product registration occurs.

In response, EPA advises that product testimonials from prior EUP participants appearing after a product is registered for the use in question would not be regarded as unlawful so long as testimonials used in the advertisements are consistent with approved uses and do not differ substantially from the claims of the final registration.

A commenter questioned whether the information in EUP technical bulletins can be considered as advertising.

The Agency would not regard distribution of EUP technical bulletins as unlawful if the information contained therein regarding the pesticide did not extend beyond that contained in EPA's approval, if the limitations on use were clearly specified, and if information in such bulletins did not otherwise promote sale or use of the pesticide.

Ideally, the Agency believes that EUP technical bulletins should be furnished only to persons signed on as EUP cooperators or participants. However, the Agency recognizes the difficulty of controlling the distribution of these bulletins.

B. Emergency Exemptions

With regard to advertising of a pesticide for a use authorized by a FIFRA section 18 emergency exemption, two commenters opposed the EPA proposal to treat as unlawful any advertisements not placed by the retail dealers who sell the pesticide. The

commenters favored allowing the manufacturer to place advertisements. One commenter opposed any advertising of emergency exemptions.

The Agency disagrees with the commenter that opposed any advertising of emergency exemptions. When an emergency occurs, it is important that those affected receive helpful information to alleviate the situation. The major issue is confinement of the pesticide use to the geographical area of the emergency.

The Agency agrees with the commenters that oppose limiting advertisements of emergency exemptions to only those placed by retail dealers. After further consideration, the Agency believes that no purpose would be served by restrictions on who may place or sponsor the advertisements, as long as the other provisions of the regulation are followed.

C. Special Local Needs Registrations

There was only one comment on this subject. The commenter supported the Agency's proposal to treat advertisements of special local needs registrations as unlawful unless they comply with the limitations set forth. However, the commenter suggested that the requirement for use of 6-point type for the notice of restrictions in printed advertisements might be inadequate to catch users' attention.

The Agency believes that the 6-point type size requirement is adequate. By "printed advertisements" EPA means to refer to printed magazines, newspapers and similar materials, not to text in television ads, billboards, or other media unlike magazines or newspapers.

D. Unregistered Products

The Agency proposed to treat as unlawful the advertisement of unregistered pesticides, but to make an exception for the advertisement of unregistered pesticides that are not available for purchase by potential users anywhere in the United States. Several commenters supported this approach, while two commenters objected to allowing any advertisements of unregistered products, finding such an approach inconsistent with FIFRA's registration scheme.

After consideration of comments, EPA has decided to withdraw the exception for the advertisement of unregistered pesticides that are not available for purchase in the United States. As noted by the commenters, allowing advertising of unregistered pesticides is inconsistent with a statutory scheme which requires that pesticides be registered and that the marketing of these pesticides be based on claims evaluated by EPA in the registration process. Allowing the advertising of unregistered pesticides may subvert the registration process by encouraging demand for section 18 emergency exemptions. Further, under the rule as proposed, manufacturers could sponsor advertising containing unsubstantiated claims up to the day of registration even though following registration such advertising would be illegal under section 12(a)(1)(B). In sum, the potential for abuse under this exception to the ban on advertising of unregistered pesticides far exceeds any information benefits gained by users through the advertising of unapproved pesticides. Further, the Agency considers cancelled pesticide products to be unregistered. Therefore, the advertisements of a cancelled pesticide product, inconsistent with existing stock provisions of the cancellation order, is unlawful.

E. Unregistered Uses

A commenter opposed any restriction on advertisements of registered products for unregistered uses. The commenter argued that such advertisements would not lead to misuse if they are properly qualified.

The Agency disagrees with the commenter. The Agency feels strongly that ads for unregistered uses of a registered product are likely to result in misuse. A person who can buy a registered pesticide, and who sees an ad for an unregistered use of that pesticide, may be tempted not to wait until registration of the use before buying and using the pesticide product for that use.

The commenter also argued that the proposed rule was at odds with FIFRA section 2(ee) and the Agency's statement of policy under section 2(ee) (46 FR 51745, October 22, 1981). Also, the commenter noted that the Agency's Policy and Criteria Notice No. 2162.3 (1981) stated that such advertisements are lawful if they are properly qualified.

Regarding FIFRA section 2(ee), the commenter raised a valid point. As a matter of policy, EPA generally has permitted a person to advertise FIFRA section 2(ee) uses even if they are not uses that have been registered. EPA, however, has explicitly limited this policy from extending to advertising for antimicrobial pesticide products targeted for use on human pathogens. 51 FR 19174 (1986). Further, advertisements made under FIFRA section 2(ee)(1) pertaining to changes in the amount of diluent used in applying pesticides for forestry or agricultural purposes must be made in accordance with the Advisory Opinion issued in the **Federal Register** on March 3, 1981 (46 FR 14965). The final interpretive rule has been amended to exclude those uses permitted by FIFRA section 2(ee) subject to the above-noted policy.

Policy and Criteria Notice No. 2162.3 (1981) was rescinded recently since it is in certain respects inconsistent with, and has been superseded by, this final rule.

It should be noted that the Agency considers cancelled pesticide uses as being unregistered uses of a registered pesticide product. Therefore, the advertisements of cancelled uses of a registered pesticide product, inconsistent with existing stock provisions of the cancellation order, is unlawful.

F. Advertisements in Media Which Reach Pesticide Users in Other Countries

The preamble to the proposed rule requested comments on the advisability of regulation of advertisements that may reach users in another country where the use advertised is not authorized. Two commenters argued that such regulation would be beyond EPA's jurisdiction and would be unworkable. After further consideration, the Agency has decided not to attempt to address this subject further at this time.

G. First Amendment Issues

Two commenters suggested in general terms that the rule as proposed might violate the First Amendment to the U.S. Constitution because it does not address a substantial government interest, is not the least intrusive means for implementing the government interest, or both. One of those comments suggested that the judicious use of increased civil penalties against blatant violators of EPA's prior policy would be less intrusive. One commenter submitted detailed arguments in support of the Agency's authority to regulate pesticide advertising and was of the opinion that the rule complied with the First Amendment.

For the reasons set forth in the preamble to the proposed rule, EPA believes that the rule promulgated today complies with the First Amendment and the judicial decisions interpreting it. The two general comments suggesting that the rule would pose First Amendment problems do not purport to explain why that preamble discussion is incorrect. The preamble noted both the nature of the government's interest and the manner in which the restrictions were tailored to be as unrestrictive as practicable in view of that interest.

H. General Comments

1. A commenter requested that the Agency consider if and how the rule would affect publication of factual data and reports in scientific journals relative to experimental use permits, unregistered products, or unregistered uses.

It is not the Agency's intent to restrict the dissemination of scientific information to the scientific community. In this regard, the Agency does not consider the publication in scientific journals of articles reporting on scientific studies to be advertising. At the same time, however, it should be noted that if a person uses a scientific journal article in an advertising campaign, claims made in the journal article may properly be treated as if they were made originally by the person who placed the advertisement. See the decision of the EPA Administrative Law Judge in the recent FIFRA civil penalty proceeding entitled *In re Sporicidin International*, No. FIFRA 88-H-02, slip op. at 37 n. 30 (November 1, 1988).

2. A commenter expressed concern that answering questions about a pending label at a growers' meeting could be construed as "suggesting or recommending" the use of a product.

Generally, giving oral answers at a growers' meeting is not considered to be advertising. This rule only applies to advertisements. In another regulation issued under FIFRA, EPA has defined advertising as: (1) Brochures, pamphlets, circulars, and similar material offered to purchasers at the point of sale or by direct mail; (2) newspapers, magazines, newsletters and other material in circulation or available to the public; (3) advertisements on broadcast media such as radio and television; (4) telephone advertising; and (5) billboards and posters. 53 FR 15987 (May 4, 1988).

It is important to note, however, that this rule does not describe the universe of acts that are unlawful under sections 12(a)(1)(A) and 12(a)(1)(B). These sections are not limited to advertising. Sections 12(a)(1) (A) and (B) make it unlawful for any person to offer for sale any pesticide if it is unregistered, or any registered pesticide if claims made for it as part of its distribution or sale differ substantially from any claim made for it as part of the statement required in connection with its registration under FIFRA section 3. In some circumstances, oral statements at a growers' meeting could be viewed as an offer for sale (section 12(a)(1)(A)) or a claim made as part of distribution or sale of a registered product (section 12(a)(1)(B)). Any person making such statements could be subject to the proscriptions in sections 12(a)(1)(A) or 12(a)(1)(B). For example, oral recommendations for unregistered uses of a pesticide (except for uses authorized by FIFRA section 2(ee)) made by a person with financial interest in that pesticide is regarded by EPA as a violation of FIFRA section 12(a)(1)(B).

For the purpose of FIFRA section 12(a)(2)(B), EPA believes that claims made in the kinds of advertising covered by this interpretative rule are "part of [the] distribution or sale" of the pesticide to which the advertising relates. The rule limits its coverage to advertisements that (1) are placed by persons who are in the pesticide business *and* (2) recommend or suggest the purchase of pesticides for certain purposes. FIFRA does not grant EPA plenary authority to regulate advertising as such, and it is arguable that there can be advertising that is separate from and not a part of the distribution of sale of a pesticide (see, e.g., the discussion of these matters in *In re Sporicidin International*, No. FIFRA 88-H-02, Slip op. at 41-43 (Nov. 1, 1988)). In this rule, EPA is not seeking to define the outer reaches of its FIFRA jurisdiction over advertising claims, but merely to state clearly its position with regard to claims in advertising that are made "to induce the * * * sale and use" of a pesticide and that therefore are a part of the distribution or sale of the pesticide. Id. at 43.

3. A commenter indicated that the "recommend or suggest" language in § 153.12(b) of the proposal is vague and ambiguous, and recommended the phrase "promote the commercial purchase or use of" instead.

The Agency is not convinced that the phrase "promote" is clearer or more specific than the phrase "recommend or suggest." The commenter's real concern (as ascertained by telephone inquiry) was that the Agency should not attempt to prohibit ads that are designed to encourage farmers to enlist as cooperators in EUP programs in which the holder of the EUP plans to sell the pesticide to the cooperator farmer. The commenter argues that these sales are not on a "commercial" scale, but are merely designed to lower the cost of the EUP effort and, perhaps, to help the EUP holder to determine whether the cooperators think the EUP product is cost-effective. EPA does not intend to discourage such ads designed merely to solicit cooperation in EUP testing, whether or not cooperators will have to purchase the product, as long as the pesticide is not mentioned in the ad.

4. A commenter expressed concern that the language of proposed § 153.12(a) would prohibit "placing" ads with an ad agency and that the act of placing the advertisement with an ad agency could subject the industry to enforcement action.

The Agency disagrees with this interpretation. Section 153.12(a) makes it clear that to be covered by the rule, the ad must actually appear in an advertising medium to which users or the general public have access. The words in question were intended to make clear the class of persons—persons in the pesticide business who, directly or through others, cause ads to appear in public advertising media—who would be deemed to have violated FIFRA. No violation would result if an ad did not appear or if, when it appeared, it conformed to the rule.

It is also important to note that the use of the phrase "place or sponsor" is meant to capture not only the action of originally causing the advertisement to appear but those actions taken subsequently to continue the publication of the advertisement. Thus, an advertisement "placed" before the effective date of this rule would become subject to the rule after it became effective upon the taking of any action to "sponsor" continued publication of the advertisement.

III. Statutory Requirements

In accordance with FIFRA section 25, EPA provided the FIFRA Scientific Advisory Panel (SAP), the Secretary of Agriculture, the Committee on Agriculture of the House of Representatives, and the Committee on Agriculture, Nutrition and Forestry of the Senate with copies of this rule. The FIFRA Scientific Advisory Panel waived its right to review and comment on the rule. The Department of Agriculture reiterated its comment made at the proposed stage of this rule. That is, the Department has no difficulty with the rule but hopes the Agency will take great care before withdrawing a section 18 emergency exemption so as to avoid punishing the user by removing the pest control tool because of some violation committed by a pesticide company. EPA agrees with the Department's comment. No comments were received from either of the Congressional Committees.

IV. Procedural Matters and Required Regulatory Reviews

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. A "major" rule is one which has an annual effect of $100 million or

more, or results in a major increase in costs or prices, or has significant adverse effects on economic activities. The Agency has reviewed this regulation and concludes that this rule will not have an annual effect of $100 million, and will not result in a major increase in costs or prices or have significant adverse effects on economic activities.

This rule has been submitted to the Office of Management and Budget for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), I hereby certify that this rule will not have a significant impact on a substantial number of small businesses.

C. Paperwork Reduction Act

This interpretive rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 40 CFR Parts 166 and 168

Advertising, Pesticides and pests, Policy statements, Reporting and recordkeeping requirements.

Dated: December 30, 1988.

John A. Moore,

Acting Administrator.

Therefore, Subchapter E of 40 CFR Chapter I is amended as follows:

PART 16—EXEMPTION OF FEDERAL AND STATE AGENCIES FOR USE OF PESTICIDES UNDER EMERGENCY CONDITIONS

1. In Part 166:

a. The authority citation for Part 166 is revised to read as follows:

Authority: 7 U.S.C. 136–136y.

b. By revising § 166.7 to read as follows:

§ 166.7 User notification; advertising.

(a) A State or Federal agency that obtains an exemption may notify eligible users of the availability of the exempted pesticide(s) through user groups, retail dealers, and other means. Notification may include distributing copies of the section 18 approval letter, labeling, or other information to eligible persons.

(b) As set forth more fully in § 168.22 of this chapter, EPA interprets FIFRA sections 12(a)(1) (A) and (B) as making it unlawful for any person who distributes, sells, offers for sale, holds for sale, ships, delivers for shipment, or receives and (having so received) delivers or offers to deliver any pesticide, to advertise the pesticide for any use authorized by an emergency exemption, except for advertisements that are placed in media that address only persons in the geographical area to which the exemption applies, state the name and address of one or more retail dealers where users may buy the pesticide, and contain a prominent notice of the limitations on use under the emergency exemption. EPA may withdraw an exemption if the use of the pesticide covered by the exemption is advertised unlawfully.

2. By adding Part 168 consisting at this time of Subpart A, General Provisions, which is reserved, and Subpart B containing § 168.22, to read as follows:

PART 168—STATEMENTS OF ENFORCEMENT POLICIES AND INTERPRETATIONS

Subpart A—General Provisions [Reserved]

Subpart B—Advertising

Sec.
168.22 Advertising of unregistered pesticides, unregistered uses of registered pesticides and FIFRA section 24(c) registrations.

Authority: 7 U.S.C. 136–136y.

Subpart B—Advertising

§ 168.22 Advertising of unregistered pesticides, unregistered uses of registered pesticides and FIFRA section 24(c) registrations.

(a) FIFRA sections 12(a)(1) (A) and (B) make it unlawful for any person to "offer for sale" any pesticide if it is unregistered, or if claims made for it as part of its distribution or sale differ substantially from any claim made for it as part of the statement required in connection with its registration under FIFRA section 3. EPA interprets these provisions as extending to advertisements in any advertising medium to which pesticide users or the general public have access.

(b) EPA regards it as unlawful for any person who distributes, sells, offers for sale, holds for sale, ships, delivers for shipment, or receives and (having so received) delivers or offers to deliver any pesticide, to place or sponsor advertisements which recommend or suggest the purchase or use of:

(1) Any pesticide for a use authorized under a FIFRA section 5 experimental use permit (EUP).

(2) Any pesticide for a use authorized under a FIFRA section 18 emergency exemption, except for advertisements that:

(i) Are placed in media which address primarily persons in the geographical area to which the exemption applies.

(ii) State the name and address of one or more retail dealers who stock the pesticide.

(iii) Contain a prominent notice of the limitations on use under the section 18 emergency exemption.

(3) Any pesticide for any use authorized only by a FIFRA section 24(c) special local need registration, unless the advertisement contains a prominent notice of the limitations on use under the section 24(c) registrations.

(4) Any unregistered pesticide for any use unless the advertisement is one permitted by paragraph (b) (2) or (3) of this section.

(5) A registered pesticide product for an unregistered use, unless the advertisement is one permitted by paragraph (b) (2) or (3) of this section. However, as a matter of policy, the Agency will not regard as unlawful the advertisement of uses permitted by FIFRA section 2(ee) provided the product is not an antimicrobial pesticide targeted against human pathogens (see 51 FR 19174; May 28, 1986).

(c) For purposes of paragraph (b) of this section, a "prominent notice of the limitations on use" is one which sets forth the limitations on use in a manner reasonably likely to be understood by persons to whom the advertisement is addressed. For printed advertising, this criterion will be met by a legend in 6-point or larger type.

[FR Doc. 89–399 Filed 1–10–89; 8:45 am]

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federal register

Wednesday
January 11, 1989

Part IV

Commodity Futures Trading Commission

17 CFR Part 34

Hybrid and Related Instruments; Proposed Rule and Statutory Interpretation

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 34

Regulation of Hybrid Instruments

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to adopt regulations concerning certain "hybrid" instruments that combine characteristics of commodity options contracts with debt or depository interests. The development of hybrid instruments with commodity-related components has raised questions concerning the status of such instruments under the Commodity Exchange Act ("CEA" or "Act") and Commission regulations. The proposed rules would establish an exemption from CFTC regulations under the CEA for hybrid instruments with limited commodity option components, based upon the limited nature of the option component and deference to other existing regulatory standards applicable to the noncommodity component of such instruments. In addition, the proposed rules would establish a notice requirement for hybrid instruments qualifying for the proposed exemption. The Commission is also publishing, in a companion release, a statutory interpretation that is intended to clarify the status of certain other categories of hybrid instruments.

DATE: Comments must be submitted on or before February 27, 1989.

ADDRESS: Comments should be submitted to the Office of Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Robert Rosenfeld, Attorney, Division of Trading and Markets, telephone (202) 254–8955, David Merrill, Senior Assistant General Counsel, telephone (202) 254–9880, or Eugene Moriarty, Director, Research Section, Division of Economic Analysis, telephone (202) 254–6990, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Burden: The public reporting burden for this collection of information is estimated to average ten minutes per response, including the time for reviewing instructions, searching existing data resources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581; and to Gary Waxman, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503.

I. Background

The Commodity Exchange Act, 7 U.S.C. 1 *et seq.*, vests the Commission with jurisdiction over, among other things, "accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an 'option' * * *.)" 7 U.S.C. 2. Section 4c of the Act generally permits the trading of commodity options only subject to regulations issued by the Commission and grants the Commission the authority to permit the offer and sale of community options without the requirement of exchange trading under such terms and conditions as the Commission may prescribe. 7 U.S.C. 6c(b), 6c(c).[1] CFTC regulations, 17 CFR 1 *et seq.*, require that, with narrowly defined exceptions, all transactions in commodity options be executed on or subject to the rules of contract markets (exchanges) designated by the CFTC. Currently, Commission regulations permit two categories of commodity options to be traded other than on designated contract markets: Dealer options and trade options.[2] In addition, the Commission has authority to exempt particular option transactions from certain aspects of its rules by rule or order [3] and to authorize the domestic offer and sale of options executed on a foreign exchange.[4]

The recent development of hybrid instruments that couple elements of futures or commodity option contracts with debt or depository obligations or other interests that are not otherwise subject to regulation under the Act reflects commercial interest in offering to the public instruments that are indexed to the price of a commodity through transactions that take place other than on designated contract markets. Such instruments may entail certain of the risks of commodity futures or option transactions but would be offered and sold over-the-counter or on securities exchanges. Thus, they would not be subject to certain protections, which specifically address commodity-related risks, afforded participants in transactions effected on or pursuant to the rule of CFTC-designated exchange markets.

In issuing the Advance Notice of Proposed Rulemaking (Regulation of Hybrid and Related Instruments) ("Advance Notice"), 52 FR 47022 (December 11, 1987), the Commission recognized that the proliferation of hybrid instruments incorporating futures or commodity option elements in innovative formats has caused uncertainty as to the regulatory status of such instruments. The Commission believes that these marketplace developments and concomitant uncertainly concerning their regulatory implications must be carefully addressed to ensure that existing regulatory structure do not unnecessarily retard growth and innovation or fail to provide protections responsive to market developments. The Commission has therefore instituted this rulemaking as a means of assuring that hybrid instruments with an option component are addressed in a manner that is consistent with the CEA and applicable regulations while permitting, to the extent possible, growth and innovation in rapidly developing markets.

Under this proposal, hybrid instruments that have limited option components, that are subject to an

[1] Section 4c(f) of the Act provides, however, that the Act shall not be deemed to govern or apply "to any transaction in an option on foreign currency traded *on* a national securities exchange." 7 U.S.C. 6c(f) (emphasis added).

[2] Dealer options are options granted by a person who was in the business of granting options on a physical commodity and in the business of buying, selling, producing or otherwise using that commodity as of May 1, 1978 and who satisfies certain net worth and other requirements of Commission rules. 7 U.S.C. 6c(d)(1); 17 CFR 32.12 (1988). Trade options are options (other than options on domestic agricultural commodities enumerated in Section 2(a)(1)(A) of the Act) offered by a person who "has a reasonable basis to believe that the option is offered to a producer, processor or commercial user of, or a merchant handling, the commodity underlying the option, or the products or by-products thereof, and that such producer, processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such." Rule 32.4(a), 17 CFR 32.4(a) (1988).

[3] Commission Rule 32.4(b) states that the Commission "may, by order, upon written request or upon its own motion, exempt any * * * person, either unconditionally or on a temporary or other conditional basis," except as to options on enumerated agricultural commodities, from the general ban on off-exchange options "if it finds, in its discretion, that it would not be contrary to the public interest to grant such exemption." 17 CFR 32.4(b) (1988).

[4] Commission Rule 30.3(a), 17 CFR 30.3(a) (1988). Pursuant to Rule 30.3(a), the Commission has authorized certain option contracts traded on the Singapore International Monetary Exchange, the Sydney Futures Exchange, and the Montreal Exchange to be offered and sold to persons located in the United States (53 FR 28826, 28832 and 28840, respectively, (July 29, 1988)).

alternative regulatory framework, and that satisfy certain additional requirements, may be offered and sold pursuant to the alternate regulatory scheme. Under this approach, the regulatory agency responsible for oversight of the commodity-independent component of a hybrid instrument would exercise regulatory responsibility for the entire instrument.

In order to assure that the agencies responsible for monitoring such instruments are sensitive to the commodity-related risks which may not otherwise be common to the instruments that they regulate, the CFTC has consulted with the federal regulatory authorities responsible for oversight of securities and banking transactions and expects to continue to work with such agencies. In these discussions, the Commission has noted, among other things: the importance of adequate disclosure to the public of risks of hybrid instruments which may differ from typical investment risks; enforcement problems that may be associated with fraudulent sales of commodity-related interests;[5] and the risks to issuers and the public posed by substantial commodity price movements. As a result of these efforts, the agencies with regulatory responsibility for issuers of commodity-related hybrid instruments affected by this proposal have indicated that they will review their regulations and consider the adequacy of the protections afforded in such areas as risk disclosures, sales practices, and financial soundness of the transactions.[6] The Commission intends to cooperate fully with other federal and state authorities in their oversight of affected transactions.

The current proposal also reflects the Commission's experience in reviewing proposed offerings of hybrid instruments on a case-by-case basis. Specifically, the Commission staff's Task Force on Off-Exchange Instruments has addressed a number of proposed offerings of instruments through a series of published "no-action" letters, employing certain of the standards set forth in the Advance Notice. For example, the staff has granted no-action relief with respect to proposed offerings of foreign currency-linked debt instruments, where the instrument's principal amount was indexed to a foreign currency on no more than a one-to-one basis, the instrument bore an above-market rate of interest, and other specified conditions were satisfied. Subsequently, the Commission established a notice procedure whereby issuers of foreign currency-linked instruments may establish eligibility for no-action relief without securing specific prior Commission approval if they can confirm that the proposed offering complies with the conditions to no-action relief set forth in such letters.[7]

No-action relief has been issued with respect to other hybrid instruments, including debentures bearing fixed annual interest in excess of 35% of the estimated annual yield at the time of issuance for a comparable pure debt instrument and also providing for additional payments, capped at a fixed amount, related to any increase in the price of natural gas over an established base price;[8] and to certificates of deposit subject to insurance by the Federal Deposit Insurance Corporation ("FDIC") with interest payable at maturity indexed, in part, to the spot price of gold and bearing a fixed rate of interest equal to at least 35% of the estimated annual yield at the time of issuance for a comparable instrument.[9]

Finally, this proposal reflects the Commission's careful review and analysis of comments received in response to the Advance Notice.

II. History of the Rulemaking

A. The Advance Notice

On December 8, 1987, the Commission approved for publication in the **Federal Register** an Advance Notice of Proposed Rulemaking concerning the regulation of hybrid and related instruments.[10] The Advance Notice set forth a framework designed to provide simplified regulatory treatment on a prospective basis for certain categories of commodity-related hybrid instruments. This proposed framework addressed:

(1) a category of Hybrid instruments with *de minimis* futures or option characteristics, as to which a jurisdictional exclusion was proposed; [11]

(2) a class of hybrid instruments characterized as predominantly debt obligations, bank deposits, or other transactions that possess only incidental commodity option elements, and that are subject to adequate regulation by another regulatory authority, as to which a regulatory exemption, upon conditions, was proposed; [12]

(3) certain commercial transactions that would constitute forward contracts [13] but for

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[5] Fraudulent and other unlawful practices historically have affected the sale of commodity options. Such practices were among the factors leading to the enactment of the Commodity Exchange Act of 1936 (Pub. L. No. 74-675, § 5, 49 Stat. 1494 (1936)) which, among other things, prohibited options trading in agricultural commodities then regulated under the Grain Futures Trading Act of 1922. Fraudulent activities in non-agricultural commodities, most notably in the late 1960's and early to mid-1970's, resulted in the Commission's ban of all options trading in 1978. 43 FR 16153 (April 17, 1978) (*see* 43 FR at 16161 for a summary of the Commission's enforcement difficulties in regulating commodity option transactions). The Commission's options ban was codified by Congress in the Futures Trading Act of 1978, 92 Stat. 867, and options trading subsequent thereto has been permitted only under carefully controlled conditions. Domestic exchange-traded commodity option transactions are governed by Part 33 of the Commission's regulations. *See, e.g.*, 46 FR 54500 (November 3, 1981) for a discussion of the Commission's domestic exchange-traded options regulations.

[6] The Commission has received correspondence from the staffs of the Securities and Exchange Commission ("SEC"), the Board of Governors of the Federal Reserve Board, and the Office of the Comptroller of the Currency reviewing their respective regulatory frameworks as applicable in these areas and recognizing their oversight responsibilities with respect to hybrid instruments. *See* Letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, and Linda C. Quinn, Director, Division of Corporation Finance, SEC, to Marshall E. Hanbury, and Paula A. Tosini, Co-Chairmen, Task Force on Off-Exchange Instruments, CFTC, dated November 18, 1988; Letter from Michael Bradfield, General Counsel, Board of Governors of the Federal Reserve System to Robert J. Mackay, Chief of Staff, CFTC, dated November 21, 1988; Letter from J. Michael Shepherd, Senior Deputy Comptroller, Corporate and Economic Programs, Office of the Comptroller of the Currency, to Robert Mackay, Chief of Staff, CFTC, dated December 14, 1988.

[7] CFTC Advisory No. 39-88, June 23, 1988 (Interpretative Letter No. 88-10, June 20, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶24,262); CFTC Advisory No. 45-88, July 19, 1988 (Interpretative Letter No. 88-11, July 13, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶24,284); and CFTC Advisory No. 48-88, July 26, 1988 (Interpretative Letter No. 88-12, July 22, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶24,285).

[8] Commission Advisory No. 63-88, September 21, 1988 (Interpretative Letter dated September 6, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶24,320).

[9] Commission Advisory No. 66-88, September 28, 1988 (Interpretative Letter dated September 23, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶24,321). In addition, by letters dated September 30 and November 2, 1988, the Task Force on Off-Exchange Instruments determined that it would not recommend the initiation of enforcement action under Section 4c of the Act, 7 U.S.C. 6c (1982), based upon the issuance of notes in two separate offerings which provided, among other things, for a non-commodity related return equal to at least 35% of the estimated annual yield at the time of issuance for a comparable pure debt or depository instrument and a commodity-related return based upon changes in the price of specified metals.

[10] 52 FR 47022 (December 11, 1987). The Advance Notice provided for a comment period of 60 days. This period was subsequently extended for an additional 60 days and expired on April 11, 1988. 53 FR 2510 (January 28, 1988).

[11] Such instruments are addressed in the statutory interpretation set forth in the Commission's companion **Federal Register** release of this date.

[12] Certain hybrid instruments with option components are addressed in this release.

[13] Section 2(a)(1)(A) of the Act, 7 U.S.C. 2, excludes from the Commission's jurisdiction "any sale of any cash commodity for deferred shipment or delivery."

the lack of delivery as the normal culmination of the transaction, as to which a generic no-action position was proposed; [14]

(4) commodity options proposed to be offered by a private grantor either separately or in conjunction with debt obligations in a public offering registered with the SEC, but which would thereafter be traded exclusively on a designated commodity exchange, which would be fully subject to the Act and CFTC regulations; [15] and

(5) instruments not specifically addressed by the proposed regulatory framework, as to which case-by-case review would be provided.[16]

B. Summary of Comments on the Advance Notice

1. In General

The Commission received 56 comment letters on the proposal: five from domestic contract markets; thirteen from banking institutions; four from federal and state regulatory agencies; seven from industry or professional associations; nine from oil companies and companies trading oil and petroleum products; eight from law firms and individuals lawyers; one from a stockholder-owned government-chartered corporation; one from a commodity trading advisor and commodity pool operator; one from a floor trading and market-maker partnership; five from broker-dealer/futures commission merchants and investment banks; one from a financial broker active in brokering swaps; and one from a trading company active in the commodities markets. A substantial proportion of the comments received in response to the Advance Notice addressed the scope of the Act's forward contract exclusion, a subject beyond the scope of this release. However, the jurisdictional exclusion proposed in the Advance Notice, which is addressed in the interpretive statement issued contemporaneously herewith, and the proposed regulatory exemption also received extensive comment.

A wide range of commenters addressing the proposed jurisdictional exclusion and regulatory exemption commended the Commission for endeavoring to clarify the law applicable to off-exchange commodity-related instruments. The commenters expressed widely divergent views, however, as to the appropriate regulatory treatment of such instruments. A number of commenters asserted that the Commission's principal function is to regulate exchange-traded futures and options and criticized the Advance Notice as an expansive assertion of jurisdiction that could impede legitimate off-exchange commercial transactions. These and other commenters contended that the off-exchange markets addressed by the Commission's proposal have not been marked by fraud, manipulation or other abuses and that CFTC regulation of such markets is therefore unwarranted. Further, a number of banks and investment firms contended that the regulatory framework proposed by the Commission could have significant anticompetitive effects upon domestic capital markets.

Conversely, other commenters, including the five futures exchanges that commented on the Advance Notice, stressed the Act's express mandate that futures transactions be conducted exclusively on approved exchange markets and urged the Commission to proceed cautiously in order to avoid abandoning its statutory jurisdiction and diluting the customer and market protections established by Congress in the CEA. Several exchange commenters cited the historical experience of customer fraud and financial failures in unregulated markets and stressed the potentially adverse effects of unregulated off-exchange markets upon regulated exchange markets.

Commenters also extensively addressed the degree to which regulatory frameworks other than the CEA and Commission regulations are applicable to hybrid instruments and should be viewed as exclusive of Commission jurisdiction. A consortium of banks, for example, argued that Congress did not intend to accord the CFTC jurisdiction over banking activities permissible under the federal banking laws, reasoning that a comprehensive regulatory framework already exists for the regulation of such conduct. A contrary view, however, was expressed by commenters who contended that Congress did not intend to permit potentially divergent regulatory frameworks to supplant the CEA's single, comprehensive regulatory framework for futures and options transactions. A number of commenters urged the Commission to consult with other federal regulators on the appropriate regulation of hybrid financial products.

2. Proposed Jurisdictional Exclusion for Hybrid Instruments With De Minimis Futures or Option Characteristics

Commenters disagreed as to the benefits of the jurisdictional exclusion for hybrid instruments with *de minimis* futures or option characteristics proposed in the Advance Notice. Among those commenters who specifically addressed the *de minimis* jurisdictional exclusion, certain contract markets and an insurance industry trade group voiced specific support for the general concept of an exclusion. Ten commenters opposed the creation of a particularized list of excluded instruments, primarily on the ground that any specific itemization of excluded instruments could cause uncertainty as to whether instruments not specifically enumerated remained subject to Commission regulation. Several of these commenters asserted that the instruments specifically addressed in the proposed jurisdictional exclusion, such as certain annuities, pensions, adjustable rate mortgages, employment agreements and lease contracts,[17] generally have not been viewed as furtures or commodity option contracts and that their exclusion by rulemaking is therefore unnecessary.[18] Other commenters noted that any express listing would require continual updating and that each new product would have to be referred to the Commission for a determination. However, a number of commenters, including an insurance industry trade association, savings institutions and swap dealers, requested that products specific to their industries be expressly excluded from Commission regulation.[19]

Three futures exchanges supported the proposed requirement that an excluded instrument include an underlying contractual obligation that serves an independent commercial purpose and that the transaction be entered into other than for speculative, hedging or investment purposes. Several other commenters opposed such a requirement, however, on the ground that the proposed restriction is unclear and overbroad in that the Commission's

[14] The Commission intends to address the issues raised in the Advance Notice concerning the scope of the forward contract jurisdictional exclusion by separate release at a later date.

[15] For example, on August 25, 1988, the Commission designated the AMEX Commodities Corporation as a contract market in gold bullion warrants. *See* Memorandum of the Division of Trading and Markets dated August 19, 1988.

[16] Case-by-case review is addresed in Section IV, *infra*.

[17] *See* 52 FR at 47022, at 47024.

[18] The Advance Notice proposal was prompted in part, however, by inquiries received by the Commission's staff concerning the status of instruments such as those proposed for exclusion.

[19] For example, an insurance industry trade association stated that all insurance and annuity products should be excluded because any indexing features of such products are subordinate and inextricably linked to another non-transferable financial interest, the indexed component of such products cannot be separately traded, and such products do not raise consumer protection or market integrity concerns.

jurisdiction does not reach all commodity-related transactions entered into for speculative, hedging or investment purposes.

3. Proposed Regulatory Exemption for "Otherwise-Regulated" Hybrid Instruments With Incidential Option Components

The Advance Notice proposed a safe harbor exemptive procedure for hybrid instruments which contain only incidental commodity option components and are subject to an adequate alternative regualtory framework. Several commenters addressed the appropriateness of the safe harbor approach proposed by the Commission. Two commenters supported the use of a safe harbor. Several futures exchanges opposed the proposed safe harbor approach, contending, for example, that such an exemption would fragment the regulatory responsibility for policing futures-related transactions and compromise the Act's regulatory integrity. Some commenters stated that Commission deference to multiple analogous regulatory frameworks may conflict with Congressional intent and promote a complex, multitiered regulatory environment which would encourage business to shop for the least restrictive regulatory system or to operate in the regulatory gaps. By contrast, other commenters stated that instruments covered by the safe harbor exemption are beyond the Commission's jurisdiction and that the criteria for exemption are too restrictive, contending that only a few products could meet such criteria and that adoption of the safe harbor would adversely affect the capital formation process and inhibit the development of new products. Comments addressed to specific proposed conditions to the exemption are discussed below.

Incidential Commodity Option Characteristics. The Advance Notice proposed several standards to identify hybrid instruments possessing "incidental" commodity option components: Minimum term to maturity of three years; minimum annual yield independent of the commodity-related component of the transaction equal to at least 35% of the estimated annual yield at the time of issuance for comparable pure debt or depository instrument issued by the same issuer; a maximum average potential commodity-related return of 20% on an annualized basis; and use of the commodity component of the hybrid instrument in a principal line of business of the issuer.

Minimum Term. Commenters who addressed the proposed term to maturity requirement generally agreed that a three-year minimum term was unnecessarily restrictive and expressed concern that hybrid instruments satisfying the requirement would not be readily marketable. Some commenters noted that the markets for bank deposits, for example, are predominantly for instruments with shorter than three-year terms. Others added that corporations have business needs for short-term financing and that a minimum three-year term would diminish flexibility in product development. One commenter expressed the opinion that even a minimum term of eighteen months would mean that affected hybrid instruments could not be hedged effectively with currently traded futures contracts. Another commenter stated that a six-month term to maturity would be sufficient to preclude abuse of the regulatory exemption by speculators.

Minimum Commodity-Independent Yield. Five commenters (a futures exchange, two law firms and two investment banking firms) addressed the proposed minimum commodity-independent yield.

Several of these commenters agreed that such a requirement was not inappropriate but disagreed as to where the standard should be drawn, suggesting figures both higher and lower than the proposed 35% requirement. One commenter stated that the proposed 35% requirement is reasonable provided that there is no maximum commodity-based return. Others recommended that to facilitate compliance, the minimum yield should be based on the best rate available in any market (foreign or domestic) for a similar loan or debt instrument of the same term. These commenters added that any regulation promulgated with respect to yield should specify the manner in which yield is to be calculated and address the effect on such calculation of an initial fee charged to the purchaser of a hybrid instrument. One commenter expressed the view that the imposition of a minimum non-commodity yield is overly restrictive and unworkable as in many instances it may be impossible to identify a comparable instrument.

Maximum Commodity-Based Return. With respect to the proposed maximum 20% annualized commodity-based return, several FCM/broker-dealer and investment firm commenters argued that such a restriction would unduly inhibit product development. One such commenter argued that a 20% ceiling on a hybrid instrument's commodity-based return ignores yield volatility differences among commodities, that to impose a commodity-based yield restriction may render such instruments virtually unmarketable, and that in determining the predominant character of a hybrid instrument, the Commission should focus solely upon the instrument's non-commodity yield. A futures exchange supported the use of a quantitative standard to determine whether the option component of a hybrid instrument is incidental but objected that the Commission's proposed standard actually permitted "non-predominant" option components as well as incidental option components. This commenter urged that the maximum commodity-based return be determined based upon an interest-rate sensitive measure, such as twice the average return on the most recent five-year Treasury note auction.

Line of Business. Commenters who addressed the proposed line of business requirement generally opposed such a requirement, contending, variously, that: (1) The requirement would unduly restrict the universe of potential users by preventing many financial institutions from qualifying for the exemption; (2) the requirement would not promote customer protection; (3) a hedging requirement in lieu of the requirement would protect customers and not restrain capital formation; (4) SEC regulations provide adequate customer protections and thus negate the need for the requirement; (5) the requirement is irrelevant to the predominance test; and (6) the requirement cannot be applied to inflation-indexed notes. One commenter added that if such a requirement were adopted, it should be limited to a condition that the commodity interest be incidental to some aspect of the hybrid issuer's business.

Performance Criteria. The Advance Notice requested comment on two performance standards—minimum $100 million net worth and cover—intended to address the ability of the issuer of an exempted hybrid instrument to satisfy the commodity-related obligations created by such instruments. The Commission invited commenters to address not only the appropriateness of such performance criteria but also whether an appropriate investment grade rating by a nationally-recognized bond rating service or compliance with requirements imposed by another federal regulatory framework would be acceptable substitutes.

Net Worth. A contract market and a commodity trading advisor expressed support for a net worth requirement. The contract market contended that a minimum net worth requirement was an essential precaution to ensure that

issuers would be able to perform their obligations. The commodity trading advisor stated that although a minimum net worth standard is appropriate, an investment grade rating by a leading bond rating service should be considered to be an acceptable alternative. Seven commenters objected to the net worth requirement. Essentially, such commenters contended that a net worth requirement would be unduly restrictive and would not necessarily reflect an investment grade rating by a national debt rating agency or other indicia of creditworthiness. Several commenters contended that a net worth requirement would impose, in effect, a merit review procedure on debt securities, which traditionally have not been subject to such review under the federal securities laws.[20] Some commenters claimed that such "merit-based" review would inhibit capital formation. The SEC, several broker-dealers and an investment bank noted that because a company's financial status may be analyzed by reference to a combination of factors and financial benchmarks, the use of one static standard such as net worth could be overly restrictive and potentially not reflective of the economic status of an issuer.

The common alternative advanced by commenters who specifically objected to the net worth requirement was disclosure of data which would enable investors to make an independent evaluation of the offering. Such commenters principally advocated reliance upon the disclosure requirements of the federal securities laws to provide investors with the information necessary to analyze the issuer's creditworthiness.

Several commenters, including a commodity trading advisor, a futures industry trade association and an insurance industry trade association, favored reliance upon an investment grade rating by a leading bond rating service in place of a net worth requirement. However, a futures exchange contended that an investment grade rating by a leading bond rating service would be an inadequate substitute for the net worth requirement.

Finally, a law firm suggested that issuers that qualify for listing on the New York Stock Exchange or American Stock Exchange should be deemed eligible for the exemption and that the test should be applied only at the time of issuance.[21] In comparison, a futures exchange contended that the Commission should monitor for continued compliance with the net worth requirement by requiring filing of year-end financial statements and should require an issuer to notify the Commission of any material changes in financial condition.

Cover. Eight commenters specifically addressed the cover requirement. Two commenters (a futures exchange and a bank) agreed that a cover requirement was a reasonable and necessary precaution to insure that issuers are able to perform their obligations. Six commenters, however, opposed the imposition of a cover requirement, essentially for the reasons cited in opposition to the proposed net worth requirement.[22] Essentially, commenters who objected to a cover requirement preferred that the Commission rely upon the disclosure requirements of federal securities laws to provide investors with information sufficient to enable them to assess the risks of hybrid transactions.

Four commenters made specific recommendations concerning the nature of any cover requirement to be adopted by the Commission. One such commenter, a futures exchange, stated that the issuer should obtain cover either through physical inventory or in the exchange futures or option markets. Three commenters suggested that if a cover requirement were adopted, the Commission should expand the scope of permissible cover to include all commercially reasonable methods, such as letters of credit, hedging contracts, insurance, or transactions with affiliates.[23] One commenter stated that the Commission should not limit the concept of cover to the generic commodity that is the subject of the commodity component of the hybrid instrument. A bank noted that if a three-year minimum term is required, covering hybrid-related commodity exposure will be difficult for many commodities, as it may not be possible to eliminate commodity price risks through the purchase of options or futures contracts.

"Otherwise-Regulated" Transactions. In issuing the Advance Notice, the Commission noted that a principal rationale for the proposed exemption was to relieve issuers of hybrid instruments that are adequately regulated by another regulatory authority from duplicative regulatory requirements. The Commission therefore requested comment upon what altenative regulatory frameworks should be considered sufficient to establish that a transaction is "otherwise-regulated." As noted previously, a number of commenters expressed the general view that instruments subject to regulation under the federal banking or securities laws should not be subject to regulation under the CEA and Commission regulations and that the CFTC lacked authority to regulate such instruments. Some commenters argued that the Commission's suggestion that the alternate regulatory framework should be "analogous to that provided by the Commission was unduly restrictive and that, apart from registration requirements under the Securities Act of 1933, substantially equivalent treatment to that provided by the CEA and Commission regulations is unlikely to be applicable.

Marketing of the Hybrid Instrument. Four commenters addressed the Commission's proposals to condition the Commission's proposals to condition the availability of exemptive treatment upon the issuer's representation that the hybrid instrument will not be marked to the public as having the beneficial characteristics of futures contracts or commodity options. A futures exchange expressed approval of the proposed marketing restriction. Other commenters stated that it should be permissible for insurers, underwriters, and sales agents to discuss the hybrid instrument's

[20] Comparisons between the regulatory framework proposed in the Advance Notice and "merit review" would appear to be misplaced. Merit regulation typically refers to state law provisions empowering the administrators of state securities laws (so-called "Blue Sky" laws) to deny securities registration under such state laws based upon the administrator's qualitative assessment of the proposed transaction's "fairness." *See, e.g.* section 306 of the Uniform Securities Act (the model Blue Sky statute) pursuant to which registration may be denied based upon, among other reasons, a determination that the offering would operate as a fraud upon purchasers or would provide unreasonable or excessive promoters' discounts, commissions or other compensation. *See also* section 25140 of the California Corporation Code, which allows the Commissioner of Corporations to deny registration if the proposed plan of business and issuance of securities is not "fair, just and equitable" or if the applicant is not believed to transact its business fairly and honestly.

[21] The law firm noted that the original listing requirement for the New York Stock Exchange is at least $18 million of net tangible assets and that of the American Stock Exchange is $4 million of net worth (*citing* New York Stock Exchange Listed Company Manual, Section 102.01 and American Stock Exchange Company Guide, Section 101(a)).

[22] The SEC also contended that the cover requirement was unrelated to the economic structure of most hybrid instruments, which typically involve cash settlement as opposed to physical delivery of the commodity. However, the proposed cover requirement was designed to provide assurance of the issuer's ability to satisfy obligations related to commodity price movements for which cover would be meaningful without regard to the form of settlement of the instrument.

[23] For purposes of the Commission's net capital rule, letters of credit, insurance and transactions with affiliates are not specifically enumerated as acceptable cover. *See* 17 CFR 1.17(j)(1) (1988). Although upon request, the Commission may recognize nonenumerated transactions as cover, the Commission has, consistent with federal securities regulations, been guided by the concept of liquidity contained in the net capital rule generally.

indexing features so long as no misrepresentation is made as to the character or regulatory status of the instrument. In addition, some commenters expressed the view that such discussions with customers may be mandatory under the disclosure requirements of the banking or securities laws or necessary under common law fraud principles. One commenter suggested that the marketing restriction should be subject to the disclosure requirements otherwise applicable to the issuer and to the issuer's determination as to what is required for full and fair disclosure.

Minimum Unit Price. The Commission also proposed in the Advance Notice to condition exemptive treatment upon the issuer's representation that the minimum unit price of the offering would be $20,000. A futures exchange supported the requirement, believing that it would enhance the likelihood that potential offerees will be financially secure and sophisticated. A commodity trading advisor/commodity pool operator contended that the minimum should be higher if the objective is customer protection. However, the eight commenters addressing this condition who opposed the minimum unit price requirement generally expressed concern that such a requirement would have a detrimental effect on marketing, trading, liquidity and customer participation in the hybrid instrument markets. Several commenters pointed out that a large number of hybrid instruments will be subject to the securities laws, including the suitability requirements imposed on broker-dealers, requirements which they contended provide a better safeguard as to the ability of an investor to bear the risk of investment than the proposed minimum unit size. A private law firm opposed the minimum unit price requirement on the ground that it had no relevance to the "predominance" inquiry or to an "otherwise-regulated" condition.

Required Disclosure. One futures exchange supported the proposed requirement that issuers of exempt instruments disclose their exempt status and recommended that the Commission expand the requirement to include written disclosure of the risks inherent in the option component of the hybrid instrument in accordance with existing disclosure requirements for exchange-traded options. Other commenters argued for expansion of the disclosure requirement to include a statement that the Commission has not reviewed or passed upon the merits of the offering and that a purchaser would not have remedies available under the commodities laws. One commenter proposed that the Commission prohibit any statements indicating that the Commission is regulating the instrument rather than require disclosure of its exempt status.

Special Calls. The Advance Notice proposal also included a requirement that issuers of exempt hybrid instruments agree to submit to special calls for information to demonstrate compliance with the conditions to exempt status. Three commenters addressed the special calls requirement. A futures exchange and a law firm supported the proposal as a method to enable the Commission to monitor compliance with the conditions for exemption but suggested that this condition not require the retroactive compilation of data or subject the issuer to surprise inspections. In contrast, a broker-dealer opposed such a procedure as unnecessary.

Exemption Procedure. The exemption proposed in the Advance Notice would have been made available based upon a self-executing filing by proposed issuers containing representations establishing compliance with the conditions of exempt status. Two commenters argued that advance notice to the Commission would be inappropriate because the proposed offering typically will not be priced nor an interest rate be selected until immediately before the offering is made. A broker-dealer opposed the filing procedure, contending that it would only unnecessarily complicate offerings. A law firm expressed support for a filing procedure as a satisfactory means of claiming the benefits of any rule. Two other commenters suggested that, in making such filings, issuers should be able to rely conclusively on an opinion from an investment banking firm that the requirements for exemption have been satisfied.

Three futures exchanges opposed the proposed self-executing nature of the exemption, contending that a review period is essential to permit the Commission to verify whether the exemption eligibility criteria are met. These commenters contended that it would be unfair to permit hybrid instruments to be exempted from Commission regulation automatically upon the filing of a notice of eligibility when exchange proposals for new contracts undergo extensive Commission review and suggested that the Commission publish filings for exemption in the **Federal Register** and seek public comment on such filings.

Hybrids Offered by Governmental and Quasi-Governmental Entities. Commenters were divided in their views as to the proposed comity exemption for hybrid instruments issued or offered by federal or state authorities, quasi-governmental authorities, and certain international agencies. Two commenters, one of which was a quasi-governmental agency, expressed approval of the proposed exemption. These commenters suggested that the Commission should establish a safe harbor to exempt those obligations enumerated as municipal and governmental securities under the Securities Exchange Act of 1934.[24] Those commenters opposing the exemption expressed concern as to the potentially unfair competitive advantage that would accrue under the proposed exemption to hybrid instruments issued or offered by governmental or quasi-governmental entities. These commenters contended that the Commission should not abdicate its oversight functions with respect to hybrid instruments offered by state or quasi-governmental entities, particularly as some of these entities may compete with private sector issuers.

III. The Proposed Regulations

A. In General

The proposed rules would establish an exemptive framework, largely based upon deference to existing regulatory standards affecting the noncommodity component of such instruments, for hybrid instruments with limited option components. The Commission believes that the proposed rules, if adopted, will complement and expand "no-action" relief accorded heretofore in the context of the Commission staff's review of proposed offerings. The proposed rules will permit additional innovative uses of commodity-indexing subject to limited conditions designed to afford assurance of the financial soundness of such transactions and appropriate regulatory oversight thereof.

As discussed previously, this proposal is predicated upon the applicability of other federal regulatory frameworks to affected instruments and upon recognition by the relevant federal regulators that the special risks and distinctive characteristics of commondity-related hybrid transactions can be addressed under their respective regulatory frameworks. This proposal also accords with the views of numerous commenters on the Advance Notice who advocated that the Commission defer to other regulatory frameworks applicable

[24] Securities Exchange Act of 1934 section 3(a)(42), 15 U.S.C. 78c(a)(42) (Supp. 1988).

to such instruments and who cautioned against adoption by the Commission of restrictive exemptive criteria that could impede capital formation. This proposal further reflects the Commission's continuing endeavor to coordinate and harmonize its regulatory framework with the regulatory frameworks of other federal regulators in a manner consistent with Congressional intent and the public interest.[25]

The Commission is proposing exemptive criteria that principally depend upon the regulated or exempt status of the hybrid instrument under the federal securities and banking laws and upon the satisfaction of one of five alternate performance criteria, which include investment grade rating, minimum net worth, cover, and, in the case of bank issues, FDIC insurance or investment grade ratings for outstanding debt instruments of the same bank. The Commission believes that these alternate criteria provide some comfort as to the financial soundness of affected hybrid transaction, while affording hybrid issuers substantial flexiblity. The Commission therefore believes that this proposal strikes a reasonable balance between the legitimate interests of market participants in employing commodity-related interests in conjunction with capital formation and commercial activities and the policy concerns reflected in the CEA.

B. Synopsis of the Proposed Regulations

Definitions. Section 34.1 of the proposed rules sets forth definitions of the terms "commodity," "hybrid instrument," "commodity-dependent payment," "commodity-independent payment," and other terms used in the proposed rules. Proposed § 34.1(a) would define "commodity" to include all commodities within the meaning of section 2(a)(1)(A) of the CEA. The statutory definition of "commodity" includes not only specifically enumerated agricultural commodities but also "also other goods and articles, except onions * * * and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in." 7 U.S.C. 2. Consequently, references in the proposed rules to commodity-indexing would encompass indexing to intangible "services, rights, and interests" as well as to physical commodities.

The proposed definition of "hybrid instrument" set forth in § 34.1(b) is drafted to include debt or depository instruments [26] having a commodity component that is not severable from the instrument as a whole. The definition is designed to make clear that "hybrid instruments" are interests that combine non-severable option or futures-like interests with other interests.[27] This means, for example, that if detachable commodity interest is offered in conjunction with a debt instrument or if the maturity of the commodity interest exceeds that of the debt instrument, the unit comprising the commodity and debt interests would not consititute a "hybrid instrument" under the proposed rules, and the commodity interest would be fully subject to the requirements of the Act and Commission regulations. This definition accords with the treatment proposed in the Advance Notice for option instruments directly on a commodity offered by a private grantor, separately or in conjunction with debt obligations, in a public offering registered with the SEC but that would in either case thereafter be traded exclusively on a designated futures exchange.[28]

Proposed § 34.1(c) defines "commodity-independent payment" as "any payment pursuant to a hybrid instrument that does not result from indexing to, or calculation by reference to, the price of a commodity." Proposed § 34.1(d) defines "commodity-dependent payment" as the converse of "commodity-independent payment," that is, as any payment pursuant to a hybrid instrument "resulting from indexing to, or calculation by reference to, the price of a commodity." Consequently, a hybrid's commodity component would include that portion of the principal or interest, or both, of a debt or depository instrument that is indexed to the price of a commodity. Thus, this definition confirms that an indexing mechanism need not be confined to any particular component of a hybrid instrument, thereby permitting flexibility in the design of such instrument's provided that the commodity component is not severable from the instrument as a whole. Proposed § 34.1(e) defines "commodity option based payment" to include any commodity-dependent payment in which the commodity indexing results in the indexing of payments for commodity price changes either above or below the indexing reference price but not both.

Proposed § 34.1(f) defines "implied option premium" as the issue price of a hybrid instrument with commodity option components less the present discounted value of the instrument's commodity-independent payments.[29] The applicable discount rate is the annual yield at the time of issuance for a comparable non-hybrid debt or depository instrument of a similar term issued by the same or a comparable issuer.

Proposed Regulatory Exemption for Certain Hybrid Instruments with Commodity Option Components. The Commission is proposing an exemption from regulation for a class of hybrid instruments with limited option commodity components. The proposed exemption, which would appear at § 34.2(a), would apply to hybrid instruments for which an appropriate degree of federal oversight exists and would be conditioned upon compliance with one of a number of alternative performance criteria designed to provide assurance of the financial integrity of such transactions.

Under proposed § 34.2(a), eligible debt securities would be limited to securities registered in accordance with the Securities Act of 1933 ("1933 Act") or qualifying for specified exemptions from registration. Eligible exempt debt securities would include: Debt securities issued in private offerings pursuant to

[25] *See, e.g.*, Commission Regulation §1.17, 17 CFR 1.17 (Minimum financial requirements for broker-dealer/futures commission merchants); Commission Regulation § 4.5, 17 CFR 4.5 (1988) (Exclusion from the definition of commodity pool operator for certain otherwise-regulated persons); Interim Report of the Working Group on Financial Markets (May 1988).

[26] The Commission requests comment as to the appropriateness and the manner of delimiting equity and other interests as hybrid instruments within the meaning of proposed Rule 34.1(b).

[27] Even though hybrid instruments may include futures-like interests, this exemptive procedure only applies to hybrid instruments with option components.

[28] *See* 52 FR 47028.

[29] For example, consider an oil-indexed note issued at par when the spot price of oil is $20 per barrel with a maturity of 5 years, a principal amount of $1000 and interest of 3% per annum. At maturity, the purchaser receives the principal plus an additional payment equal to the oil price at maturity in excess of $30 but not exceeding $50 multiplied by 100 barrels. [The commodity-dependent payment is indexed on more than a one-to-one basis since any positive price change is multiplied by 100 barrels instead of 50 barrels.] If we assume the same issuer would pay 9% per annum for a conventional debt instrument of the same maturity, then the implied option premium is equal to:

Discount rate = 9% per annum

Issue price = $1000

Present discounted value of the commodity-independent payments =

$$\frac{\$1000}{(1.09)^5} + \frac{30 \times 1 - [1/(1.09)^5]}{.09} = \$766.62$$

Implied option premium = $1000 − 766.62 = $233.38

$$\frac{\text{Implied option premium}}{\text{Issue price}} = \frac{\$233.38}{\$1000} = 23.3\%$$

The Commission will accept the underwriter's good-faith estimate of what the issuer's debt rate would be for a comparable fixed income instrument.

SEC Regulation 506, 17 CFR Part 506 (1988); exempt debt securities under section 3(a)(2) of the 1933 Act that are issued or guaranteed by the United States, the District of Columbia, any state of the United States, or any political subdivision or public instrumentality thereof, or by any bank that is a member of the FDIC; commercial paper exempt from registration under section 3(a)(3) of the 1933 Act; and insurance policies and annuity contracts subject to state regulation and exempt from registration under section 3(a)(8) of the 1933 Act. The Commission's intention is to make the exemption available with respect to: (1) Hybrid debt securities that are issued in connection with registered offerings and thus are subject to the full range of 1933 Act protections; (2) hybrid debt instruments that are issued pursuant to exemptions from the 1933 Act that provide other indicia of soundness, such as the exemption for government issues; or (3) transactions as to which such protections generally should be unnecessary, such as sales of commercial paper.[30] Time deposits offered by an FDIC-member bank would also constitute eligible instruments under § 34.2(a)(1) due to the applicability of federal regulation to the offering bank.

Under proposed § 34.2(a)(2), the commodity component of exempted instruments would be subject to a maximum implied option premium of 40% of the issue price of the instruments. As previously noted, the term "implied option premium" would be defined in proposed § 34.1(f) as the issue price of the instrument less the present, or discounted, value of the instrument's commodity-independent payments.[31] Under this standard, those instruments which have implied option premiums greater than 40% of the instrument's total price at issuance would be ineligible for exemption under the proposed regulations.[32]

The Commission also proposes to condition the availability of exemptive relief under proposed § 34.2(a) to transactions which satisfy one of five alternate "performance criteria" designed to provide further assurance of the ability of the offeror of the hybrid instrument to satisfy its obligations under the instrument. As set forth in proposed § 34.2(a)(3), these criteria would streamline the performance criteria set forth in the Advance Notice by making minimum net worth and cover requirements alternative rather than cumulative requirements and by providing additional means of satisfying the performance condition. Thus, under proposed § 34.2(a)(3), the issuer or instrument must comply with *one* of the following requirements: (i) The instrument has been rated in one of the three highest categories by at least two nationally recognized investment rating organizations; (ii) the issuer maintains at least $100 million in net worth; (iii) the issuer maintains cover equal to the amount of its commitments to deliver, to take delivery of, or to pay the cash value of, the commodity (or a change in the price of the commodity that is the subject of the commodity component of the instrument); [33] or in the case of a bank issuer: (iv) Other outstanding debt instruments offered by the same bank have been rated in one of the three highest categories by at least two nationally recognized investment rating organizations; or (v) the instrument is subject to FDIC insurance.

The § 34.2 exemption would be conditioned upon compliance with a prohibition against marketing of the instrument as a futures contract or a commodity option or, except to the extent necessary to describe the functioning of the instrument or to comply with applicable disclosure requirements, as having the characteristics of futures contracts or commodity options. This restriction would prevent marketing representations that would be inconsistent with what the Commission believes to be the character of such instruments and with the proposed regulatory treatment of such instruments. Such representations could potentially mislead purchasers as to the essential nature of the instruments, their legal status and the form of regulatory supervision to which they are subject.

The exception for disclosures that are purely descriptive in nature and necessary to disclose fairly the operation of the instrument or that are required by federal securities laws or other disclosure requirements makes express what the Commission believed to be implicit in the marketing restriction proposed in the Advance Notice. However, a number of commenters expressed concern that the proposed prohibition upon marketing of hybrid instruments as having the beneficial characteristics of futures or commodity options contracts could result in issuers failing to provide a full description of the operation of the instrument or to make required disclosures. Therefore, the Commission has sought to make clear in proposed § 34.2(a)(4) that objective descriptive data necessary to full disclosure are not prohibited. The Commission believes that proposed § 34.2(a)(4) balances the need to prevent misleading characterizations of the nature of exempted instruments with the objective of assuring meaningful disclosure of the actual operation and risks of such instruments.

Proposed § 34.2(a)(5) would preclude settlement of an exempted hybrid instrument by means of a delivery instrument, such as an exchange-approved warehouse receipt or shipping certificate, that is specified in the rules of a designated contract market. This provision would preclude only settlement in delivery instruments specifically defined as such in exchange rules. It would not preclude settlement in the form of a commodity that is of deliverable grade or quality under exchange rules. Thus, for example, an exempted instrument may be settled in the commodity meeting the delivery standards of an exchange futures contract for that commodity but may not be settled in an exchange-approved warehouse receipt for that commodity. The Commission believes that this requirement will not interfere with the ability of issuers to elect physical delivery alternatives to cash settlement but will protect against interference with deliverable supplies for settlement of designated futures or option contracts and potential congestion and price manipulation in such markets.

Proposed § 34.2(b) states that the Commission may, upon written petition, grant such further exemptions with respect to hybrid instruments as it determines are not contrary to the

[30] In addition, for example, proposed § 34.2(a) incorporates the 1933 Act's exemption for insurance policies "issued by a corporation subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State or Territory of the United States or the District of Columbia." This approach is based both upon the character of such interests as primarily non-investment vehicles as well as upon the existence of a state regulatory structure applicable to a field historically viewed as sufficiently addressed by state regulation. In addition, as noted by an insurance trade association in commenting upon the Advance Notice, such products are generally non-transferable, individually negotiated contracts. *See also* 52 FR 47022, at 47024.

[31] *See* footnote 29 *supra*.

[32] If the proposed exemption were to be extended to granted options in addition to purchased options, the maximum implied option premium criterion would be required to be framed in terms of the absolute value of the implied option premium and, in addition, establishment of a ceiling on maximum loss might be appropriate. The Commission requests comment as to the appropriateness of extending the proposed exemption to granted options and the conditions pursuant to which such options should be permitted.

[33] The Commission requests comment whether there are other performance criteria in addition to those proposed which also should be considered sufficient to qualify an issuer.

public interest. This provision reflects the Commission's existing authority under Section 4c(b) of the Act, 7 U.S.C. 6c(b), to prescribe by rule, regulation or order the terms and conditions pursuant to which commodity option transactions may occur. As drafted, proposed § 34.2(b) is broader than current Rule 32.4(b), which provides that the Commission may by order exempt any person from any provision of Part 32 *except* §§ 32.2, 32.8 and 32.9,[34] if it finds such exemption not contrary to the public interest. Proposed § 34.2(b) potentially would permit case-by-case exemptive relief from all Commission regulations applicable to option transactions. The Commission believes that the broader exemptive relief contemplated in proposed § 34.2(b) is appropriate in the context of hybrid transactions which, in contrast to the non-hybrid interests addressed by Rule 32.4(b), contain option elements in combination with a debt or depository interest not otherwise subject to Commission regulation.

Proposed Notice Requirement for Exempted Option Hybrids. The Commission is also proposing a notice requirement, applicable to offerings of exempted option hybrid instruments where the price used for determining the settlement of such instruments' commodity component is based on prices reported on a designated contract market. In these limited circumstances, proposed § 34.3 would require the issuer to provide the Commission with written notice, within five business days of the effective date of the offering, of: (i) The name, address, and telephone number of the issuer and of a designated contact person for such issuer; (ii) the maturity date and authorized or anticipated size of the offering; and (iii) a copy of the prospectus, offering document or other written description of the instrument provided to actual or prospective purchasers thereof. This notice procedure would facilitate the Commission's market surveillance efforts by providing information relevant to available cash market supplies. This proposed notice requirement is restricted to the very limited situation in which the exempted hybrid may directly impinge upon exchange-traded markets because its price is based upon prices reported on a designated contract market. The notice requirement applies only with respect to hybrid instruments exempted pursuant to § 34.2 whose settlement prices are based upon prices reported on a designated contract market. The Commission believes that this notice procedure will assist it in discharging its market surveillance responsibilities, which are critical to the detection and prevention of market manipulations, and will serve as an adjunct to the Commission's large trader reporting system, which has been praised as a model for effective market surveillance. This requirement would supplant the notice of eligibility filing requirement and special call procedure proposed in the Advance Notice, both of which were criticized by some commenters as unnecessarily burdensome.

IV. Case-By-Case Review of Other Jurisdictional Issues

This proposal is intended to facilitate legitimate market developments in a field distinguished by innovation and rapid growth. Nevertheless, as the Commission recognized in the Advance Notice, no exemptive bright lines can be expected to address all hybrid instruments which may be appropriate for exemptive treatment. Consequently, the Commission proposes to continue to review on a case-by-case basis, in appropriate circumstances, proposed offerings not addressed by the proposed rules.[35] In this context, proposed § 34.2(b) would expressly recognize the Commission's discretion to grant particularized exemptions, as warranted, to hybrid instruments with option components. Such particularized review would permit the resolution of issues that are not susceptible to generalized treatment, accommodate product innovation, and permit more limited relief in cases that would not qualify for a categorical exemption.

V. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the PRA the Commission has submitted this rule in proposed form and its associated information collection requirements to the Office of Management and Budget. Persons wishing to comment on the information which would be required by this proposed rule should contact Gary Waxman, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581, (202) 254–9735.

As previously noted, proposed § 34.3 imposes a filing requirement only with respect to hybrid instruments whose settlement price is based upon prices reported on a designated contract market. These filings will provide the Commission with information concerning transactions that may have a significant impact upon designated contract markets and will facilitate the effective performance of the Commission's surveillance responsibilities under the CEA. The Commission estimates that the one-time filing requirement, when applicable will require no more than ten minutes per response to prepare. Although the number of potential filers cannot be determined prospectively, based upon the Commission's staff experience with notice filings under recent hybrid instrument advisories, it is estimated that approximately thirty notices would be filed in one year pursuant to proposed Rule 34.3 by issuers such as corporations, government-chartered corporations and banks.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*, requires each Federal agency to consider, in the course of proposing substantive rules, the effect of those rules on small entities. A small entity is defined to include, *inter alia*, a "small business" and a "small organization," 5 U.S.C. 601(6).[36] In defining a "small business," the RFA adopts the definition of "small business concern" in Section 3 of the Small Business Act, 5 U.S.C. 601(3). However, an agency, after consultation with the Office of Advocacy of the SBA, may establish its own definition of a "small business." 5 U.S.C. 601(3).

As a threshold matter, the Commission notes that the proposed rules, if adopted, are not intended to introduce any new prohibitions but, rather, to clarify existing law and to provide exemptive relief from existing

[34] Rule 32.2 precludes off-exchange option transactions on enumerated agricultural commodities. Rules 32.8 and 32.9 relate, respectively, to unlawful representations and fraud in connection with commodity option transactions.

[35] In addition, during the pendency of this rulemaking, the Commission plans to continue to address proposed offerings on a case-by-case basis under the auspices of the Task Force on Off-Exchange Instruments. *See* Section I, *supra*.

[36] "Small organization," as used in the RFA, means a "not-for-profit enterprise which is independenly owned and operated and is not dominant in its field." 5 U.S.C. 601(4). The RFA does not incorporate the size standards of the Small Business Administration for small organizations. Agencies are expressly authorized to establish their own definitions of small organization. (*Id.*)

regulatory requirements. The current rulemaking would permit a broad class of hybrid instruments with option components to be traded without compliance with the pre-existing statutory and regulatory requirements that commodity interests be traded on or subject to the rules of a designated exchange market. By providing objective standards for exemption from regulation, the proposals will relieve issuers of regulatory constraints under the CEA and Commission regulations. To the extent that a new notification procedure is established, that procedure entails insignificant cost and burden. The Commission anticipates that the proposed rules will dispel uncertainty concerning the appropriate regulatory requirements for various types of commodity-related hybrid instruments and thereby facilitate rather than impede novel forms of financial transactions while at the same time fulfilling the statutory mandates of the CEA.

The Commission previously has formulated its own standards of what constitutes a small business with respect to the types of entities regulated by it. The Commission has determined that contract markets,[37] futures commission merchants,[38] registered commodity pool operators[39] and large traders[40] should not be considered small entities for purposes of the RFA. With respect to commodity trading advisors, floor brokers and introducing brokers, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some of such entities should be considered to be small entities and, in the event of such a finding, that it would analyze the economic impact on them of the proposed rule.[41]

The Commission notes that the notification procedure for the proposed regulatory exemption (proposed § 34.3), would apply generally to any issuer of hybrid instruments with commodity option-dependent payments which are referenced to a futures price on a designated contract market and does not specifically implicate any Commission registrant, large trader or contract market in their status as such. As the Commission's prior determinations may not address all entities potentially affected by the proposed exemption, the RFA's definition of small business may be relevant. Section 3 of the Small Business Act, 15 U.S.C. 632, essentially provides a three-part definition of "small business concern": One that is independently owned and operated; which is not dominant in its field; and which falls within the size standards regarding dollar volume of business and/or number of employees established by the Administrator of the Small Business Administration ("SBA").[42] The current size standards of the SBA are set forth in 13 CFR 121.2 (1988), which classifies businesses by industry categories (standard industrial classifications or "SIC"), such as mining, manufacturing, transportation, finance, insurance and real estate, and by reference to a maximum number of employees or annual receipts. These SIC standards are further modified by criteria specific to the SBA program pursuant to which a business is seeking assistance.[43] As previously noted by the Commission when it proposed its own definitions of small entities with respect to entities regulated by the Commission, SBA definitions of small businesses are clearly limited in their usefulness for Commission purposes.[44]

While the SIC classifications would be of assistance for a defined group of hybrid instrument issuers, the inability to identify potential issuers lessens somewhat the usefulness of the SIC categories for purposes of addressing the RFA implications of the proposed exemption. For example, although certain "heavy industries" appear to be categorized as small businesses if they employ less than 500 employees, [45] and certain "service" industries are small businesses if their annual revenue is less than $3.5 million,[46] other industry categories, such as finance, insurance and real estate, are considered small businesses only if their assets are less than $100 million.[47]

Based upon the Commission's experience with issuers who have sought no-action relief or filed notices pursuant to published Commission advisories concerning hybrid instruments, the Commission anticipates that most issuers would not constitute "small businesses." [48] Of course, it is possible that firms defined as small businesses under section 3 of the Small Business Act could issue commodity-related hybrid instruments and thus be affected by the proposed rules. While the Commission does not believe that such issuers will constitute a significant portion of total issuers of hybrid instruments, the Commission believes that even if such were the case, the rules would not have a significant economic impact.

The Commission notes that the proposed rules would not require burdensome legal, accounting, consulting or expert costs. The determination of whether an offering would qualify for the proposed exemption requires minimal analysis of data that will be self-evident to the issuer. In making this determination, the issuer would be permitted to rely upon the underwriter's good faith opinion as to the offering's compliance with the quantitative conditions to exemptive treatment. In those limited cases in which the issuer must file a notice with the Commission (*i.e.*, when the settlement price is based upon prices reported on a designated contract market), the Commission notes that the information required to be disclosed in the filing notice is minimal, will be known to the issuer, and will not require any data compilation or analysis. Indeed, for those issuers which are required to comply with the registration requirements of the Securities Act of 1933, the prospectus requested by the Commission will have been generated in the first instance by the issuer in order

[37] 47 FR 18618 (April 30, 1982).

[38] *Id.* at 18619.

[39] *Id.*

[40] *Id.* at 18620.

[41] *Id.* commodity trading advisors and floor brokers); 48 FR 35249, 35276 (August 3, 1983) (introducing brokers).

[42] 15 U.S.C. 632(a)(1) provides in part: For the purposes of this chapter, a small-business concern, including but not limited to enterprises that are engaged in the business of production of food and fiber, ranching and raising of livestock, aquaculture, and all other farming and agricultural related industries, shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation: Provided, That notwithstanding any other provision of law, an agricultural enterprise shall be deemed to be a small business concern if it (including its affiliates) has annual receipts not in excess of $500,000. In addition to the foregoing criteria the Administrator, in making a detailed definition, may use these criteria, among others: Number of employees and dollar volume of business* * *.

[43] *See* 13 CFR 121.4 (1988) (small business for financial programs) and 13 CFR 121.5 (1988) (small business for Government procurement).

[44] *See* 46 FR 23940 n.3 (April 29, 1981).

[45] 13 CFR 121.2 (1988) (Table 1-B. Mining, D. Manufacturing).

[46] *Id.* (Table 1-I. Services).

[47] *Id.* (Table 1-H. Finance, Insurance and Real Estate). For example, federally-charted banks and savings institutions are small businesses if their assets are less than $100 million.

[48] All such petitioners for relief were either major corporations, government-chartered corporations or large banks and all had assets approaching or in excess of $100 million. The Commission further notes that under SEC Rule 157, 17 CFR 230.157, issuers of securities are considered to be small entities for purposes of the RFA if their total assets are $5 million or less and the proposed offering does not exceed $5 million. Under such criteria, all of the petitioners who have sought regulatory relief or filed under hybrid advisory procedures with the Commission also would not be small entities under SEC Rule 157.

to comply with the mandatory disclosure requirements of the 1933 Act. The other information requirements, *e.g.*, name and address of the issuer and offering size, are *de minimis*.

Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), that the proposed rules will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission invites comment from any firm which believes that these rules, as proposed, would have a significant economic impact on its operations.

List of Subjects in 17 CFR Part 34

Commodity futures, Commodity options, Hybrid instruments.

For the reasons set forth above, new Part 34 is proposed to be added to Title 17 of the Code of Federal Regulations, to read as follows:

PART 34—REGULATION OF HYBRID INSTRUMENTS

Sec.
34.1 Definitions.
34.2 Option Hybrid exemption.
34.3 Option Hybrid notice requirement.

Authority: 7 U.S.C. 2, 6c and 12a.

§ 34.1 Definitions.

(a) *Commodity*. Commodity means a commodity within the meaning of section 2(a)(1)(A) of the Commodity Exchange Act.

(b) *Hybrid Instrument*. Hybrid instrument means a debt or depository instrument with a commodity-dependent payment that is not severable therefrom.

(c) *Commodity-Independent Payment*. Commodity-independent payment means any payment pursuant to a hybrid instrument that does not result from indexing to, or calculation by reference to, the price of a commodity.

(d) *Commodity-Dependent Payment*. Commodity-dependent payment means any payment pursuant to a hybrid instrument resulting from indexing to, or calculation by reference to, the price of a commodity.

(e) *Commodity Option Based Payment*. Commodity option based payment means any commodity-dependent payment in which the commodity price indexing or referencing results in the indexing of payments for commodity prices either above or below the indexing reference price but not both.

(f) *Implied Option Premium*. Implied option premium means the issue price of a hybrid instrument with commodity based option payments less the present, or discounted, value of the commodity-independent payments. The discount rate to be used in determining the present value is the annual yield at the time of issuance for a comparable non-hybrid debt or depository instrument of a similar term issued by the same or a comparable issuer.

§ 34.2 Option hybrid exemption.

(a) A hybrid instrument whose only commodity-dependent payments are commodity option based payments is exempt from regulation under the Commodity Exchange Act, except as provided in § 34.3 of this part, if:

(1) The instrument is:

(i) A security within the meaning of section 2(1) of the Securities Act of 1933 which is registered in accordance with section 5 of the Securities Act of 1933;

(ii) An exempt security under sections 3(a)(3) or 3(a)(8) of the Securities Act of 1933;

(iii) An exempt security under section 3(a)(2) of the Securities Act of 1933 that is issued or guaranteed by the United States, any territory of the United States, the District of Columbia or any state of the United States, or any political subdivision or public instrumentality thereof;

(iv) An exempt security under section 3(a)(2) of the Securities Act of 1933 that is issued or guaranteed by a bank that is a member of the Federal Deposit Insurance Corporation;

(v) A security that is exempt from registration pursuant to § 230.506 of this title; or

(vi) A time deposit within the meaning of 12 CFR 204.2(c)(1) offered by a bank that is a member of the Federal Deposit Insurance Corporation and marketed and sold directly to a customer or through a broker registered in accordance with section 15 of the Securities Exchange Act of 1934 and applicable regulations;

(2) The value of the implied option premium is no greater than 40% of the issue price of the instrument;

(3) The issuer or instrument satisfies one of the following requirements:

(i) The instrument has been rated in one of the three highest categories by at least two nationally recognized investment rating organizations;

(ii) The issuer maintains at least $100 million in net worth;

(iii) The issuer maintains cover, consisting of the physical commodity or futures, forward, or option contracts for the commodity, equal to the amount of its commitments to deliver, to take delivery of, or to pay the cash value of, the commodity (or a change in the price of the commodity) that is the subject of the commodity component of the instrument; or, in the case of an issuer that is a bank:

(iv) Other outstanding debt instruments offered by the same bank have been rated in one of the three highest categories by at least two nationally recognized investment rating organizations; or

(v) The instrument is subject to insurance by the Federal Deposit Insurance Corporation;

(4) The instrument is not marketed as a futures contract or a commodity option, or, except to the extent necessary to describe the functioning of the instrument or to comply with applicable disclosure requirements, as having the characteristics of a futures contract or a commodity option; and

(5) The instrument does not provide for settlement in the form of a delivery instrument, for example, an exchange-approved warehouse receipt or shipping certificate, specified in the rules of a designated contract market.

(b) The Commission may, based upon written petition, grant such further exemptions with respect to hybrid instruments subject to this section as it determines are not contrary to the public interest.

§ 34.3 Option hybrid notice requirement.

Where the price used for determining the settlement of the commodity-dependent payments of an option hybrid instrument exempted pursuant to § 34.2 is based on prices reported on a designated contract market, the issuer shall provide the Commission in writing, within five business days of the effective date of the offering of the instrument:

(a) The name, address, and telephone number of the issuer and of a designated contact person for such issuer;

(b) The maturity date and authorized or expected size of the offering; and

(c) A copy of the prospectus, offering document or other written description of the instrument provided to actual or prospective purchasers thereof.

Issued in Washington, DC, on January 5, 1989, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-477 Filed 1-10-89; 8:45 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Statutory Interpretation Concerning Certain Hybrid Instruments

AGENCY: Commodity Futures Trading Commission.

ACTION: Statutory interpretation and request for comments.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is issuing this interpretation regarding certain hybrid instruments that combine characteristics of futures contracts or commodity options with debt or depository interests. The development of such hybrid instruments with commodity-related components has raised questions concerning the status of such instruments under the Commodity Exchange Act, as amended ("Act" or "CEA"), 7 U.S.C. 1, *et seq.*, and Commission regulations. Through this interpretation, the Commission is recognizing an exclusion from regulation under the Act and Commission regulations for those categories of hybrid instruments that meet the criteria specified below. In a separate release, the Commission also is proposing an exemption for other types of hybrid instruments having commodity option features.

ADDRESS: Any comments concerning this interpretation should be submitted to the Office of Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

EFFECTIVE DATE: February 27, 1989.

FOR FUTURE INFORMATION CONTACT: David R. Merrill, Senior Assistant General Counsel, Office of the General Counsel, telephone (202) 254-9880; Eugene J. Moriarty, Director, Research Section, Division of Economic Analysis, telephone (202) 254-6990; or Robert H. Rosenfeld, Attorney, Division of Trading and Markets, telephone (202) 254-8955, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The Commodity Exchange Act vests the Commission with jurisdiction over "transactions involving contracts of sale of a commodity for future delivery"[1] and "accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an 'option' * * *) * * *." 7 U.S.C. 2. Section 4(a) of the Act makes it "unlawful for any person to offer to enter into, to enter into, to execute, to confirm the execution of * * * or otherwise deal[] in any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery" that is not made "on or subject to the rules of a board of trade which has been designated by the Commission as a 'contract market' for such commodity." 7 U.S.C. 6(a).[2] Section 4c of the Act generally permits the trading of commodity options only pursuant to regulations issued by the Commission and grants the Commission the authority to permit the offer and sale of commodity options without the requirement of exchange trading "under such terms and conditions as the Commission may prescribe." 7 U.S.C. 6c(b), 6c(c).[3]

The development of hybrid instruments that couple elements of futures contracts or commodity options with debt or depository obligations is a recent phenomenon. This development reflects commercial interest in offering instruments that are indexed to or have a return that is otherwise calculated by reference to the price of a commodity through transactions that take place other than on designated futures or option exchanges. The development of these hybrid instruments with commodity-related components has given rise to uncertainty concerning the treatment of such instruments by the Commission under the CEA and Commission regulations.[4]

In determining whether a transaction constitutes a futures or options contract, the Commission assesses the transaction as a whole with a critical eye toward its underlying purpose.[5] Through this interpretation, the Commission is stating its view that certain categories of hybrid instruments are not within the coverage of the Act and Commission regulations. The Commission's interpretations addresses those hybrid instruments that are debt securities within the meaning of section 2(1) of the Securities Act of 1933, or time deposits within the meaning of 12 CFR 204.2(c)(1) offered by a bank that is a Federal Deposit Insurance Corporation ("FDIC") member and marketed and sold directly to a customer.[6] Treatment under this interpretation is limited to such hybrid instruments that are bona fide debt or depository instruments and that: (1) Are indexed to a commodity on no greater than a one-to-one basis; (2) limit the maximum loss on the instrument; (3) have a significant commodity-independent yield [7]; (4) do not have a commodity component that is severable from the debt or depository instrument; (5) do not call for delivery of a commodity by means of an instrument specified in the rules of a designated contract market; and (6) are not marketed as being or having the characteristics of a futures contract or commodity option.[8] These additional criteria are discussed below.

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[1] The Act provides that the term "future delivery" does not include any sale of any cash commodity for deferred shipment or delivery. 7 U.S.C. 2. This interpretation does not address the scope or content of that exclusion.

[2] This prohibition does not apply to contracts "made on or subject to the rules of a board of trade, exchange, or market located outside the United States * * *." 7 U.S.C. 6(a).

[3] Section 4c(f) of the Act provides, however, that the Act shall not be deemed to govern or apply "to any transaction in an option on foreign currency traded *on* a national securities exchange." 7 U.S.C. 6c(f). (Emphasis added).

[4] The Task Force on Off-Exchange Instruments, in letters dated September 30 and November 2, 1988, determined that it would not recommend the initiation of enforcement action under section 4c of the Act, 7 U.S.C. 6c (1982), based upon the issuance of notes by two different companies. *See also, e.g.*, CFTC Advisory No. 39-88, June 23, 1988 (Interpretative Letter No. 88-10); CFTC Advisory No. 45-88, July 19, 1988 (Interpretative Letter No. 88-11); CFTC Advisory No. 48-88, July 26, 1988 (Interpretative Letter No. 88-12); CFTC Advisory No. 63-88, September 21, 1988 (Interpretative Letter No. 88-14); and CFTC Advisory No. 66-88, September 28, 1988 (Interpretative Letter No. 88-15).

[5] *See, e.g., CFTC v. Co Petro Marketing Group, Inc.*, 680 F.2d 573, 581 (9th Cir. 1982) (transactions held to be futures contracts).

[6] Under this interpretation, instruments having returns indexed to or calculated on the basis of the price of a commodity that are not bona fide debt or depository instruments will not be viewed as hybrid instruments even though they incorporate some features common to securities or depository instruments.

[7] The term commodity-independent yield means the yield to maturity on the hybrid instrument due solely to commodity-independent payments. As used herein, the term commodity-independent payment means any payment pursuant to a hybrid instrument that does not result from indexing to or calculation by reference to the price of a commodity. In addition, as used herein, the term commodity-dependent payment means any payment pursuant to a hybrid instrument resulting from indexing to or calculation by reference to the price of a commodity.

[8] The approach contained in this interpretation is consistent with Commission and court precedent analyzing the characteristics of futures contracts and commodity options in other contexts. *See, e.g., Co Petro Marketing Group; Precious Metals Associates, Inc. v. CFTC*, 620 F.2d 900 (1st Cir. 1980); *CFTC v. Wellington Precious Metals, Inc.*, No. 85-3565-Civ-ATKINS (S.D. Fla. July 12, 1988); *CFTC v. American Metal Exchange Corp.*, 693 F. Supp. 168 (D.N.J. 1988) (appeal pending); *CFTC v. Trinity Metals Exchange*, No. 85-1482-CV-W-3 (W.D. Mo. Jan 21, 1986); *CFTC v. U.S. Metals Depository Co.*, 468 F. Supp. 1149 (S.D.N.Y. 1979); *CFTC v. Morgan, Harris & Scott, Ltd.*, 484 F. Supp. 669 (S.D.N.Y. 1979); *In re First National Monetary Corp.*, [1984-86 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,698 (CFTC 1985); *In re Stovall*, [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,941 (CFTC 1979).

First, the instrument's commodity-dependent payments must be no greater than on a one-to-one basis. This means that for hybrid instruments offering a coupon or interest rate indexed to or calculated by reference to the price of a commodity, the percentage change in such coupon or interest rate for any payment period may not exceed the percentage change in the commodity price to which the coupon or interest payment is indexed. For hybrid instruments having a face value so indexed or calculated, the percentage change in the commodity-dependent payment may not exceed the percentage change in the commodity price to which the face value is indexed, provided, however, that the commodity-dependent payment must be adjusted for any repayments of the face value prior to maturity. In the case of hybrid instruments having a face value *and* a coupon or interest so indexed or calculated, the percentage change in each of the commodity-dependent payments must meet the applicable requirements stated above. Under this test, for example, the change in the value of a commodity-dependent payment which is indexed to the face amount of an instrument may not exceed the change in the value of an amount of the commodity whose value at the time of issuance equals the face amount of the instrument.[9]

Second, the maximum loss of the purchaser on the commodity-dependent component must be limited as described below. In the case of a hybrid instrument offering a coupon or interest indexed to or calculated by referenece to the price of a commodity, the maximum loss of each coupon or interest payment may not exceed the commodity-indepenent interest. In the case of a hybrid instrument with a face value so indexed or calculated, the maximum loss of the purchaser may not exceed the face value or purchase price of the instrument, whichever is greater. In the case of a hybrid instrument having both a coupon or interest and face value so indexed or calculated, the maximum loss may not exceed the respective limits stated above. In any event, the issuer must receive full payment for the instrument upon its issuance, and the provisions of the instrument cannot require a purchaser or any holder to pay additional "out-of-pocket" funds or consideration during the life of the instrument or at its maturity.

Third, in order to limit the commodity-dependent yield, the commodity-independent yield must equal at least 50%, but no more than 150%, of the estimated annual yield at the time of issuance for a comparable non-hybird debt or depository instrument issued by the same or a similar issuer.[10] As a result of this requirement, for example, no more than half of the issue price of a hybrid coupon par bond of long maturity would be attributable to the value of its commodity-dependent component.[11] In addition, the commodity-independent yield paid over the life of the instrumenmt would be at least one half of what would be paid on a conventional debt or depository instrument.[12]

This interpretation is not applicable to any instrument that would permit the commodity-dependent component to be traded separately.[13] For example, instruments in which the commodity-dependent component has a longer maturity than the commodity-independent component would not be covered by this interpretation.

In addition, this interpretation does not apply to hybrid instruments which settle by means of a delivery instrument, such as an exchange-approved warehouse receipt or shipping certificate, that is specified in the rules of a designated contract market. This limitation would not interfere with the ability of issuers to develop hybrid instruments with physical delivery alternatives to cash settlement, but provides some protection against interference with deliverable supplies for settlement of designated futures or option contracts.[14]

This interpretation also would not apply to hybrid instruments that are marketed as being or having the characteristics of a futures contract or a commodity option, except to the extent necessary to describe the operation of the instrument or to comply with applicable disclosure requirements. The Commission believes that this marketing limitation balances the need to prevent misleading characterizations of the nature of these instruments against the objective of assuring meaningful disclosure of their actual operation and risks.

Through this interpretation, the Commission is extending the type of analysis underlying the *de minimis* category suggested in its Advance Notice of Proposed Rulemaking (Regulation of Hybrid and Related Instruments) ("Advance Notice"), 52 FR 47022 (Dec. 11, 1987) to a broader class of commodity-related instruments.[15] As such, this interpretation continues the Commission's ongoing efforts to coordinate and harmonize its regulatory framework with those of other federal regulators in a manner consistent with Congressional intent and the public interest.[16]

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[9] *See* CFTC Advisory No. 39-88, June 23, 1988 (Interpretative Letter No. 88-10, at p. 4), in which the Commission's Off-Exchange Task Force granted no-action relief with respect to proposed offering of foreign currency-linked debt instruments, where, among other things, the instrument's face value indexed to the yen on no more than a one-to-one basis. The no-action letter stated that these notes provided both an interest payment denominated in dollars and repayment of principal based on yen value "such that the Notes provide a fixed interest payment together with a principal return resembling, in many respects, a yen-denominated bond which, when converted into dollars, reflects the prevailing exchange rate."

[10] Examples of the operation of the commodity-independent yield criterion and other elements of this statement are contained in the attachment to this interpretation.

[11] Application of this standard under the assumption of an interest rate of 10% means that coupon instruments issued at par with up to a one year maturity could have commodity components which account for approximately 5% of the issue price; such instruments with a maturity of five years could have commodity components which account for approximately 20% of the issue price; and such instruments with a maturity of ten years could have commodity components which account for approximately 30% of the issue price.

[12] For hybrid instruments designed to afford a real rate of return through indexing to the Consumer Price Index or other broadly based inflation measures, the estimated annual yield of a comparable non-hybrid instrument would be the estimated real rate of interest, calculated as the bond-equivalent yeild of the most recently issued one-year Treasury bill less the most recently announced annualized percentage change in the Consumer Price Index.

[13] However, options on securities are excluded from Commission regulation. 7 U.S.C. 2a(i).

[14] Such protection against interference with deliverable supplies is vital to the prevention of price manipulation on designated contract markets, which is central to the Commission's regulatory mission. *See* 7 U.S.C. 5, 7, 7a, 9, and 13(b).

[15] As discussed in the Advance Notice, the Commission is of the view that, in general, non-transferable annuities or pensions derived from an employment relationship that are indexed to a commodity or group of commodities, as well as adjustable rate mortgages, employment agreements, leases and similar agreements, are beyond the purview of the CEA and Commission regulations. Further, the Commission is of the view that, in general, lending or deposit instruments in which the interest payments are measured by reference to published interest rates or indices of interest rates such as the prime rate, the London Interbank Offer Rate (LIBOR), and Treasury bill rates are beyond the purview of the Act and Commission regulations. Moreover, while this statutory interpretation does not expressly discuss loans offered by FDIC member banks, the Commission believes that commerical loans, that is, bank loans directly to a commercial customer for the purpose of providing funds for use by the customer in its business (*See Board of Governors of the Federal Reserve System v. Dimension Financial Corp.*, 474 U.S. 361 (1985)) as well as loans to foreign governments or political subdivisions thereof, would be beyond the purview of the CEA and Commission regulations.

[16] *See, e.g.*, Commission Regulation 1.17, 17 CFR 1.17 (1988) (Minimum financial requirements for broker/dealer futures commission merchants);

Continued

This interpretation is intended to clarify that hybrid instruments which provide a commodity-linked return and meet the criteria described above are, when viewed as a whole, more appropriately treated as debt securities or bank depository instruments rather than as commodity futures or commodity option contracts. Issuers of hybrid debt securities instruments would be subject to the Securities Act of 1933 and, as such, would be required either to comply with applicable registration requirements or to qualify for an exemption therefrom. Hybrid bank offerings would be subject to the requirements imposed on the FDIC-Insured offering bank by its Federal regulators.[17]

The Commission is interested in receiving the written views of any interested persons concerning this interpretation. Such views may be submitted to the Commission at the address set forth above. Prior to the effective date of this interpretation, the Commission will not take any enforcement action regarding offerings which meet the criteria set forth above. The Commission also will continue to consider relief on a case-by-case basis for instruments not addressed in this interpretation.[18] This interpretation supersedes the procedures established by Commission Advisories 48–88 (July 26, 1988) and 56–88 (August 19, 1988).

Issued in Washington, DC, on January 5, 1989, by the Commission.

Jean A. Webb,

Secretary of the Commission.

Attachment—Examples of Hybrid Instruments Meeting the Criteria of the Interpretative Statement

I. Introduction

Provided below are analyses of two hybrid instruments under the following criteria discussed in the interpretative statement: One-to-One Indexing, Maximum Loss, Commodity-Independent Yield, and Non-Severability. As discussed in that statement, any instrument which satisfies these criteria also must satisfy the interpretation's other criteria to be treated as excluded from the CFTC's jurisdiction. Section II of this attachment illustrates an instrument with its face value indexed to a foreign exchange rate while Section III illustrates an instrument with its interest payment indexed to the price of gold.

II. Bond Whose Face Value is Indexed to a Foreign Exchange Rate

The instrument to be examined in this example has the following characteristics: (1) The face value is $1000 and the instrument is issued at par; (2) the coupon is 12% per annum of the $1000 face value;[1] (3) assuming a spot exchange rate at issuance of one British pound equal to two U.S. dollars, *i.e.*, L1=$2, the face value of the bond is adjusted by the change in the dollar value of 500 British pounds, *i.e.*, $1000/$2 per L=500L, from the price of pounds at the time of issuance to maturity; (4) any downward adjustment to the face value cannot exceed the amount of the face value ($1000); (5) the instrument's commodity component is not severable. Based upon the above, the *commodity-independent payment* consists of a fixed coupon payment per annum of $120 and, at maturity, the face value of $1000. The *commodity-dependent payment*, which constitutes the embedded futures-like component, may be represented as follows:

Commodity-dependent payment$=L500\times(\$/L_{mat}-\$2/L)$[2] Thus, the coupon, face value, and commodity-dependent payments at maturity may be represented, respectively, as follows: $\$120+\$1000+L500\times(\$/L_{mat}-L\ \$2/L)$.

One-to-One Indexing

The description of the instrument's commodity adjustment satisfies the one-to-one indexing criterion: A 1% change in the dollar-pound exchange rate changes the commodity-dependent payment by an amount equal to 1% of the $1000 face value. Assume that at maturity there is a 1% rise in the value of the pound vis-a-vis the dollar, *i.e.*, 1L=$2.02. As a result, the commodity-dependent payment at maturity equals the following:

$$L500\times(\$2.02/L-\$2/L)=L500\times\frac{\$.02}{L}=\$10$$

This $10 adjustment to face value, therefore, corresponds to a 1% change as a percentage of face value *i.e.*, $1000×.01=$10.

Maximum Loss

The description of the instrument also prohibits a loss greater than the face value. Essentially, a complete loss of the face value requires a change in the exchange rate such that the pound declines to zero dollars. In this case, the commodity-dependent payment would be equal to −$1000. Therefore, the repayment at maturity is zero dollars because the $1000 return of face value is offset by the −$1000 commodity-dependent payment. Note that the instrument as constructed provides for a coupon payment of $120, nonetheless.

Commodity-Independent Yield

The coupon payment associated with the instrument is 12% of the face value. Since it has been assumed that the same or a similar issuer of a comparable non-hybrid bond would issue such an instrument with a 10% yield, the hybrid instrument's coupon is 120% of that estimated yield. Hence, the criterion that the commodity-independent yield be within the range of 50% to 150% of the estimated yield at the time of issuance is satisfied.

Non-Severable Commodity Component

By its terms, the instrument examined cannot be severed into a separate commodity component and non-commodity component. It is important to recognize that, even though the analysis conceptually decomposes the instrument into component parts, the component parts cannot be decomposed subsequent to or at issuance.

Commission Regulation § 4.5, 17 CFR 4.5 (1988) (Exclusion from the definition of commodity pool operator for certain otherwise-regulated persons); Interim Report of the Working Group on Financial Markets (May 1988).

[17] The Commission has received correspondence from the staffs of the Securities and Exchange Commission ("SEC"), the Board of Governor of the Federal Reserve System, and the Office of the Comptroller of the Currency reviewing their respective regulatory frameworks as applicable in these areas and recognizing their oversight responsibilities with respect to hybrid instruments. *See* Letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, and Linda C. Quinn, Director, Division of Corporations Finance, SEC, to Marshall E. Hanbury, and Paula A. Tosini, Co-Chairmen, Task Force of Off-Exchange Instruments, CFTC, dated November 18, 1988; Letter from Michael Bradfield, General Counsel, Board of Governors of the Federal Reserve System to Robert J. Mackay, Chief of Staff, CFTC, dated November 21, 1988; Letter from J. Michael Shepherd, Senior Deputy Comptroller, Corporate and Economic Programs, Office of the Comptroller of the Currency, to Robert Mackay, Chief of Staff, CFTC, dated December 14, 1988.

[18] The Commission will address swap transactions and other interests in later releases.

[1] It is assumed that a conventional bond by the same or similar issuer would have a 10% coupon.

[2] If, instead, the exchange rate at issuance were assumed to be L1=$3, then the commodity-dependent payment would be: $1000/$3 per L=L333.33×($/$L_{mat}$−$3/L).

III. Depository Instrument Whose Interest Payment is Indexed to the Price of Gold

The instrument to be examined in this example is as follows: (1) The deposited amount or face value is $1000, and the instrument is issued at par; (2) the interest yield is 8% per annum of the deposited amount or face value;[3] (3) the commodity-dependent interest payment is obtained by dividing the commodity-independent interest payment by $500. This quantity is then multiplied by the difference between the spot price of gold at the time of the interest payment and $500, if the spot price of gold exceeds $500; otherwise, there is no adjustment; (4) the commodity-dependent payment cannot result in a loss that is more than the commodity-independent interest payment; (5) the commodity component and non-commodity component are not severable.

Based upon the above, the commodity-independent payment consists of a fixed interest payment of $80 and the face value of $1000 at maturity (*i.e.*, year end). For such a depository instrument, the commodity-dependent payment, which constitutes the embedded option-like component, may be represented at $80 multiplied by the difference between the spot price of gold at the time of the interest payment and $500 divided by $500, if the spot price of gold exceeds $500. If the spot price of gold is less than or equal to $500, the commodity-dependent payment is equal to zero. Thus, the adjusted interest payment is: $80+commodity-dependent payment, and the total payment at maturity is: $1000+$80+commodity-dependent payment.

One-to-One

The instrument described above satisfies the one-to-one criterion because the indexing feature adjusts the commodity-dependent interest payment as a percentage of the commodity-independent interest payment by the same rate of change as that of the price of gold. That is, a 1% rise in the spot price of gold results in an $.80 commodity-dependent interest payment, which is 1% of the commodity-independent interest payment of $80. To illustrate, assume that the price of gold at issuance is $500. Suppose that by the interest payment date the spot price of gold increases by 1% to $505. As a result, the commodity-dependent interest payment is as follows:

$$\$80\times(\$505-\$500)/\$500=\$.80$$

This $.80 commodity-dependent payment corresponds to 1% of the commodity-independent interest payment, *i.e.*, $80×.01=$.80.

Maximum Loss

The description of the instrument prohibits a reduction in the interest payment. The adjustment formula only allows increases in payments based on changes in the price of gold since the commodity component is option-like. Accordingly, the description of the instrument states that an adjustment cannot reduce the fixed interest payment.

Commodity-Independent Yield

The instrument provides an 8% per annum interest payment. This fixed interest payment equals 80% of the assumed normal interest payment of 10%. As a result, the commodity-independent yield of the depository instrument is within the range of the 50% to 150% commodity-independent yield criterion.

Non-Severable Commodity Component

The instrument as defined, although examined conceptually by its constituent parts, cannot be severed subsequent to or at issuance.

[3] The time to maturity is assumed to be one year with the interest paid at year end. In addition, the same or a similarly situated issuer of a one-year $1000 deposit is assumed to pay 10% per annum.

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